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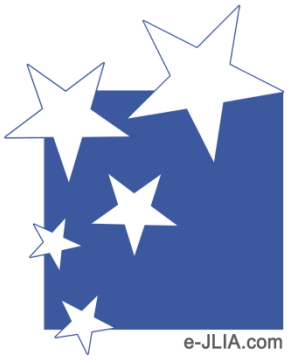

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THE CONCEPT OF INTERNATIONAL RESPONSIBILITY OF STATE IN THE INTERNATIONAL PUBLIC LAW SYSTEM

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Abstract

The goal of the paper is to depict the international responsibility of state as the closest link to the core, axiology and teleology of the international law. The concept of international responsibility could be interpreted as an inter-phase, a stadium between the state sovereignty in internal sense, on one hand and the ultimate goal of realistically feasible implementation of the principles of the international law, saliently with coercion (as a paramount hierarchical level), on the other. The focus would be on the actions, capacities and attributes of state as an active and passive subject of paramount significance in the establishment of international legal touchstones for its international responsibility, as well as on the contextual correlation among the international community, the state and specific international legal subsystems. The issue of quantification of the gravity of the wrongfulness of the act is essential for differential determination of the international responsibility of state.

Key words: International responsibility of state; international law; international subject; sovereignty; coercion mechanisms.

INTRODUCTION

The evolutionary level of human consciousness indicates tendency towards behavior inspired by individual or joint interests, despite the ideal vision that entails voluntary fulfillment of obligations, compromise and *bona fide* relations and in that context the international law is forced to confine itself within the limits of the notions of coercion with the purpose of enactment of legal obligations and relations, as a historical-evolutionary imperative, all the while the possibility to engage the alternative types of coercive law-abidance is minimal. Primarily, the national states dispose of these executive organs and instruments that can carry out coercive measures, yet still the international legal system lacks such (organs and instruments) despite the options for enforcement of economic, political and military sanctions in certain circumstances upon certain subjects and states that had undertaken an international obligation and have breached it. In this context, the term "lacks" alludes once again to the confinement of the concept regarding the role of the state, its sovereignty and subsequently, its competencies, power and action areas, so the fulfilling of the international legal obligations undertaken is viable exclusively through the instruments and organs of a particular state as a direct regulator and enforcer. On the other hand, coercive mechanisms on the international scene that have evolved from various communities, organizations, as well as from variety of ideological, but also from pragmatical proveniences do exist and their development is a vivid process. Their spectral manifestations are also remarkable, ranging from an embargo, other types of economic pressure, diplomatic note and pressure, abolishment of multi-resource aid for developing countries, financial penalties, international organization membership suspension etc. Ultimately, the effectiveness of these mechanisms also derives from the subject and the attributes of the state.

The theoretical, scientific disputes and opposite opinions regarding the issue of the quality of the effects and results of the international legal system, especially the ones that challenge the purpose and the effectiveness of the international law, find their place in the holistic picture of its interpretation, but their significance is diminished when brought at the junction with reality and the non-existent alternatives for regulating human relations and processes on a global level, aiming to providing general legal certainty. Still, even in a flawed, not perfect form, the existence of international legal system is necessary as an evolutionary phase which in perspective and as developing trend contains greater unification of global legal rules referring to numerous and layered social, economic and purely legal areas, as well as intensified cooperation among states, international organizations and other subjects emerging on the international scene.

The international responsibility of state is the closest link to the core and teleology of the international law and the establishment of an international legal order, in general, as a global system for introducing functional rules for conduct of the international subjects. The concept of international responsibility could be interpreted as a stadium between the internal law and state sovereignty in internal sense, on one hand and the ultimate goal of realistically feasible implementation of the principles of the international law, saliently with coercion (as a paramount hierarchical level), on the other. Namely, the international responsibility represents a stepping stone towards the ultimate point of the international law and international legal system, yet it does not represent this point *per se*. The ultimate issue and salient problem is the issue of the enforceability of international law, while the rules on international responsibility define the fundament for its establishment and as such represent an inter-phase, and based on such establishment of this category, foremost theoretically and normatively, then concretely and operationally, from case to case, the parameters of applicability and enforceability in this legal-political area will be defined, differentiating among each other by time, subjects and modi.

This field is vast and leaves space for a more holistic analysis or for deepening into some of the aspects – therefore, only several aspects are chosen, mainly to accentuate the role of the state and the position of the concept of responsibility of state in the developmental dynamics of the axiological, but also of the pragmatic teleology of the international law.

CODIFICATION AND LEVEL OF GENERALITY OF THE CONCEPT OF INTERNATIONAL RESPONSIBILITY OF STATE

The rules referring to the whole problematic of state responsibility have gradually developed throughout previous decades, but the firm establishment of this concept with strictly defined core is a recent phenomenon in the international law. The inception of the defining of the concept of responsibility of state is in 1928 when the Permanent Court for International Justice, in the *Chorzov* case points out that "as principle of the international law, the breach of each legal obligation means responsibility for repairment of the damage." (Ortakovski and Milenkovska 2014, 120). The 1929 Harvard Draft Research for Responsibility of States for Damage Done in their Territory to the Persons or Property of Foreigners is one of the first proposed codifications of the law of state responsibility, yet with modest scope. (Crawford 2015, 32).

Despite the international legal stand-points that promote reciprocity of rights and duties either among clusters of associated states or of states and international organizations, the international law has evolved in direction of acceptance of the multilateralism and global public interests, specifically the interests of the international community as a whole, for which the

endeavors and stances of the International Law Commission have their merits in the area of responsibility and finding a regime for implementation of the interest of the international community as a whole. (Tams and Asteriti 2013, 7). State responsibility is one of the first fourteen areas, originally chosen by the ILC for the 'codification and progressive development.' The preparation of current acts regarding this matter has lasted for decades, resulting in several documents, out of which the key one is the Resolution 56/83 for International Responsibility of States for Internationally Wrongful Acts (further on, Resolution 56/83), adopted by the UN General Assembly in 2001. The ideological creator of the Draft-articles on international responsibility of states for internationally wrongful acts – the ILC, as well as the UNGA, through stipulation and transposition of these articles into the final end act – the Resolution 56/83 adopted on 12.12.2001, have become teleological determined for on one hand minimalistic, and on the other, unifying definition of state responsibility, thus establishing the ground standards for a steady formulation of previously undefined legal matter. They establish the general principle, while its elaboration is left to other numerous documents and areas of international law. By the commitment for unification of the definition of international responsibility of state, the ILC directly affects the world's perception for state responsibility. This intention receives its confirmation also when the General Assembly in an unusual manner launches this resolution, recommending it to the UN member states, regardless of their intention for its formal ratification and implementation in the internal, domestic legal systems.

Naturally, the question of justification of the generality of Resolution 56/63 contents poses itself, but in this case the automatic acceptance of the attribute 'generality' would be the adequate approach, for the sake of the principle of sovereignty of states and the objective development and position of the circumstances in the international law, from which this generality stems immanently. Namely, it represents a part of the secondary rules, which means it sets the concept of the state responsibility in a more generalizing manner, setting it on a level of principle, while the particular modi, types of breaches of international law, as well as the concrete sanctions are stipulated in detailed legal acts. For instance, the obligation to prosecute and punish individuals, including state officials (normally, ultimately connected to the establishment of state responsibility), is primarily a matter of primary rules, as well as the greatest number of legal acts that entail individual responsibility implicate state's obligation to prosecute. (Nollkaemper 2009, 17). The correlation between the action capacitiy of the international community, the state and particular international legal sub-systems is complementary to some extent, but these capacities can be in a conflict among themselves as well, which inevitably generates the necessity of generalitzation of the unifying document – Resolution 53/63.

The entirity of the legal process when determining state responsibility, its legal consequences and their legal effectualisation, which contains several elements including which would the primary rules be, which *lex specialis* would be applied, before which organ or institution would the process be conducted, which would the involved subjects be, the issues related to legal remedies, periods, contents of the final decisions etc., depend on the particular international legal sub-system. Certainly, after the point of determining certain state's responsibility, the particular international system has the advantage in terms of enforcement of institutional decisions because of the more elaborate or effective coercion mechanisms it disposes of. That is the substantial functional aspect. Even formally, in terms of operative applicability, Article 55 of the Resolution 56/83 provides priority application of *lex specialis* stemming from international legal rules (UNGA Resolution 56/83, Art. 55), vis-à-vis this

Resolution which is treated as *lex generalis*. An excellent, noticeable, highly functional, influential, even value-generating example for such advantage referring to the implementation is the functioning symbiosis of the European Court for Human Rights, based on the European Convention for Human Rights and the actions of the signatory states of this document. The international economic organizations have this kind of advantage as well, because their substance is constituted of more easily quantifiable relations.

CURRENT CONCEPT OF THE INTERNATIONAL RESPONSIBILITY OF STATE

The international responsibility of state is a reflection of the limitation of external state sovereignty, in terms of establishing international responsibility when a state commits an internationally wrongful act, i.e. when it breaches an obligation undertaken with a treaty while causing loss or damage to another state. (Ortakovski and Milenkovska 2014, 122).

Precondition for the existence of the concept of international responsibility of state is the principles related to the notions of state sovereignty and equality of states. (Ortakovski and Milenkovska 2014, 122). The current document from which this definition originates is the aforementioned Resolution 56/83, so the analysis of the concept of international state's responsibility could be greatly identified with the analysis of this particular document. In this respect, a segmented review of the initial definition is necessary, while the order of the elaborated category is not indicative for its gravity or significance. Primarily, a review of the state as a subject of the international law then determining international responsibility of state would take place, as well as a review of the wrongfulness of the acts, their effects and time of performance.

The state as a subject of the international law

In a structurarily complex and multilevel international system of numerous relations, circumstances and processes, the regulation of the most of the aspects of the international responsibility is necessary. The Resolution 56/83 refers exclusively to the responsibility of the state as a unitary, monolithic, sovereign subject, but the progressive normative efforts are evident in the tendencies of the ILC and its 2011 Draft-Articles for international responsibility of international organizations (further on: 2011 Draft-articles), as well. The perspectives of the international law incorporate re-conceptualization of specific categories and rights for particular participants on the international scene (such as the physical persons and the international organizations), especially in the human rights area in the international law or in some international institutional systems such as the legal and political system of the EU etc. Still, this paper would elaborate and focus on the actions, capacities and attributes of state as an active and passive subject in the establishment of international legal touchstones for its international responsibility. Today, this basic rule can be found in the Resolution 56/83, where it is set down as a general principle by the Article 1 which provides: "every internationally wrongful act of a State entails the international responsibility of that State." (UNGA Resolution 56/83, Art. 1) Furtheron in the same Resolution, Article 4 determines the definition of an act of a state, which is 'the conduct of any legislative, executive or judicial organ of any state, whatever its character as an organ of the central or of the local government, whose status as a state organ is determined according to the internal law of the state. (UNGA Resolution 56/83, Art. 4). In the next several

articles the modi of various subjects' actions on behalf of the state are précised. The state will bear responsibility exclusively for the conduct of the organ or the official of the state that originates from its prerogatives when exercising its/his state authority, not including these acts in the private sphere. The international responsibility established with this Resolution refers exclusively to the states as equal subjects in the international law, but not to individuals and other subjects, despite the fact that the individual responsibility determined contrary to that state's knowledge or the scope of competencies that have been vested in that individual by the state, can exist alongside with the vicarious responsibility of the state. (Ortakovski and Milenkovska 2014, 127).

Taking into consideration that the responsibility of the international organizations is separate, equally complex thematic, in function of the focus topic, the attention will be kept exclusively to the rules coming from the 2011 Draft-articles that treat the subject of the state when determining its international responsibility. Namely, in these Draft-articles as counterparts of the Resolution 56/83 provisions, in the most general manner and completely in the spirit of the above mentioned resolution, the international responsibility of the state is brought in correlation with an internationally wrongful act connected with the conduct of an international organization. (ILC DARIO 2011, Art. 1, Par. 2). More precisely, the articles 58-62 of the 2011 Draft-articles for responsibility of international organizations by the ILC regulate this matter, but of particular significance for defining the distinction between the subjectivity of these two types of entities (the state and the international organization) are the Articles 59, 61 and 62 because they infer to the nature of these subjects, their inter- relations, simultaneously involving the concept of the state's sovereignty in contemporary terms – concept of a relative, i.e. non-absolute sovereignty of state, based on the Weber's definition, yet distanced from it, as well as the differentiated leveling of the sovereignty between the member-states and the international organization, depending on the constitutive provisions and legal acts of the respective international organization. For instance, Article 59 of the 2011 Draft-articles provisions that the state that directs and controls an international organization in the commission of an internationally wrongful act done by the latter is internationally responsible for that act if the state has done it with knowledge of the circumstances of the wrongful act. (ILC DARIO 2011, Art. 59).

Article 61 Paragraph 1 of the 2011 Draft-articles stipulates that "a state member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit and act that, if committed by the state, would have constituted a breach of that obligation." (ILC DARIO 2011, Art. 61) The plurality of responsible subjects could be brought into this context, stipulated in the Article 48 of the 2011 Draft-articles, stating that when an international organization and one or more states or other international organizations are responsible for the same internationally wrongful act, the responsibility of each state or organization may be invoked in relation to that act. (ILC DARIO 2011, Art. 48).

On the other hand, the responsibility in case of hypothetically possible overlapping of the effective control of the state and the international organization is regulated, as well – according to Article 7 of the 2011 Draft-articles, "the conduct of an organ of a state that is placed at the disposal of an international organization shall be considered under international law as an act of the organization that exercises effective control over that conduct." (ILC DARIO 2011, Art. 7). With this provision an elementary distinction is made between the act of the state and the act of the international organization that had had at its disposal the state's organ or official,

which would be basis for further determination of the distinction between the competencies and subsequently, the responsibilities of these two international legal subjects.

Quantifying the gravity of wrongfulness of the act and the inflicted damage

The characterization of an act of a state as internationally wrongful is governed by international law, irrespective by the characterization of the same act as lawful by internal law. (UNGA Resolution 56/83, Art. 3). The differentiation between grave (systemic and grave breach of *jus cogens*) and "regular" breach of international law, i.e. breach of an international obligation, opens space for quantitative and qualitative distinction when setting down the consequences of the respective wrongful act.

At a previous point in time, the ILC thought the difference ought to be expressed as one between serious breaches, labeled "crimes" and ordinary breaches, labeled "delicts", but the terminology that classifies an act in a criminal category remained subject of controversial debates which have prevented the ILC from discussing the implications of the crime-delict dichotomy. (Tams and Asteriti 2013, 17). In other words, the general manner of formulation is accepted, tied to a previous legal-lexical international consensus referring primarily to the category *jus cogens* (with its fundaments in the 1969 Vienna Convention on the Law of Treaties), but also concerning contextual definition of civic and criminal responsibility. To be emphasized, this generalizing formulation refers only to the international responsibility of the states, but not to the one of the international organizations and individuals, for which assignment of criminal act is possible. On the other hand, penalties of criminal legal nature are possible for the individuals that are in governing positions in the moment of the commission of the wrongful act of the state. According to the international law, usually the state, and not the individual is held responsible, but all combinations are possible, which means the individual can be held responsible, precluding state responsibility when state officials and citizens of a state commit internationally wrongful acts against the civil population, but a joint - state and individual responsibility can be invoked, as well. (Posner and Sykes 2006, 62). The standpoint of the ILC and subsequently of the UNGA, for serious breach of international obligation is reflected in its definition in Article 40 of the Resolution 56/83 where the gravity of the breach is differentiated according to whether a peremptory norm of *jus cogens* is breached, especially accentuated in situations when such breach is gross or systemic, i.e. perpetual. (UNGA Resolution 56/83, Art. 40). There are several legal situations that preclude the wrongful act, but under any circumstances, the compliance with the peremptory norms *jus cogens* must not be brought into question, especially taking in consideration that in the Resolution 56/83 there are several provisions stipulating that the obligations of the responsible state (the state responsibility) might concern or to be owed to the whole international community (*erga omnes*), which means that the occurrence of legal situations with greater gravity of state responsibility is possible and that these are connected to the legal interest of all the countries because of its *jus cogens* concerning, which raises other questions presented further in the paper. The tight conceptualization of the category 'serious breach', mainly because of the relatively mild and vague consequences could be subjected to criticism that it disavows the contents and the gravity of this type of breach. In this context the effects of the countermeasures are inevitable to mention. The countermeasures as form of acting that precludes the wrongfulness of the act do not have a retributive aim and the tendency of the international law rhetoric is to reduce or disregard the pejorative title "retorsion". Two principles established with the Resolution 56/83 clash – the possibility of every state to

invoke responsibility if the wrongful act concerns fundamental values of the international community formulated in the peremptory norms and the possibility to use countermeasures as a valid instrument for making a point internationally. Although it is accepted that in order the state's responsibility to exist, previous breach of international obligation must had occurred and damage (material or moral) must have been inflicted, there is still a vivid debate in legal theory regarding the measurement of the damage as a standard in international law (Crawford 2015, 58). Namely, in specific contexts the question is posed of whether any kind of damage is sufficient for such defining or is "significant" damage (Crawford 2015, 58) necessary, which would the parameters for determining significant damage be etc, but that is currently an open question in the science of international law. Still, certain international legal tendencies can be identified. Generally, overlooking or neglecting minor breaches, although unprincipled, it is in positive correlation to the level of globalization of the system and the central organizations constituted to regulate particular questions, in order to ensure relative stability in the relations between factors and subjects that are complex and leveled in their core; and not always consistent, principled reaction, even for the sake of correction of the breach of the obligation, is beneficial for the global and long-term picture of the relations. The damage must be proven by the damaged state, i. e. the burden of proof lies on the party that claims that a certain country should bear responsibility, but the problem is that such proof-providing might be difficult in numerous areas. Depending on the gravity of the accusation, the need for the solidity and conclusiveness of the proof varies accordingly, while the case gets exceptional gravity when a peremptory norm *jus cogens* is breached. (Shaw 2008, 567). Proving a causal link between the breach of the international obligation and the act of commission or omission itself is of essential importance for determining the state's responsibility. There is a variety of international obligations from numerous fields in which the damage done to other states could not be expected, would be difficult to prove or is not the substance of the obligation. Such examples are several areas such as environmental protection, disarmament and other preventive obligations in the field of peace and security, but the most remarkable is the area of human rights, for which France has put a reserve on the Resolution 56/83. (Crawford 2015, 57).

The wrongfulness of the act is configured not just directly *ex delictio*, but also *sine delicto*, if concerning acts that are not *de jure* forbidden by international law, but from the substance of the circumstances and the context of the treaties regulating specific areas such as environmental conventions, it turns out that if damage to the environment is done and that reflects to other states, the state that has inflicted the damage will be held internationally responsible. (Ortakovski and Milenkovska 2014, 123). To emphasize that despite the invocation of the latter type of responsibility entails certain level of indirectness and implication, still, the international obligation itself must exist and the state that had undertaken it must have been bound itself or made that commitment before the moment of committing the wrongful act, in order a real state's responsibility to be determined and not to charge a country retroactively, which as a legal principle is in function of legal certainty and the rule of general international legality. To resume, even though secondary rules are in question, the concept of damage has room for legal concretization in direction of differentiation several types of damage by areas of legal regulation (environment, trade relations, criminal acts, etc.) with the possibility of emphasizing or defining exceptions for specific legal situations.

Setting the wrongful act of state in time

In order to establish the wrongful act, it is necessary for it to be brought in chronological correlation with the undertaking of the obligation. Article 13 of the Resolution 56/ 83 resolves this, by stipulating that "an act of a state does not constitute a breach of an international obligation unless the state is bound by the obligation in question at the time the act occurs." (UNGA Resolution 56/83, Art. 13). This article obviously is not explicitly formulated as a forbidden retroactivity, yet regardless of the form, the time positioning of the wrongful act and its correlation with the time of undertaking the obligation by the state points directly to the principle of forbidden retroactivity (forbidden enactment of norms with retroactive force, i.e. *ex post facto* laws). This principle is not necessary applicable to other international legal areas in general, because despite its recognition by the positive law of most of the civilized nations, this principle has relative nature in international law, is characterized with many exceptions and there is no rule of general customary international law forbidding the enactment of norms with retroactive force. (Frick and Oberprantacher 2009, 103).

CONSEQUENCES FROM INTERNATIONAL RESPONSIBILITY OF STATE

The international law does not distinguish between contractual and tortuous responsibility, so that any violation by a state of any obligation of whatever origin gives rise to state responsibility and consequently to the duty of reparation (Shaw 2008, 567). The legal consequences that occur for the state that has done the wrongful act, do not release that state from the initial obligation ("do not affect the continued duty of the responsible state to perform the obligation breached") (UNGA Resolution 56/83, Art. 29), which means that the existence of legal consequences for breach of obligation is consistent and parallel to the duty of performing the obligation and is not mutually exclusive. The state responsible for the internationally wrongful act is under the obligation primarily to cease that act and to offer appropriate assurances and guarantees of non-repetition. (UNGA Resolution 56/83, Art. 30). Furtheron, one of the forms of reparation takes place or certain combination of theirs. The responsible state is under the obligation to make full reparation for the injury (material and moral) caused by the internationally wrongful act. (UNGA Resolution 56/83, Art. 31). As a broader definition of the concept reparation is considered the statement of the Permanent Court for International Justice in *Chorzow* case, which is that "reparation must, as far as possible, annul all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed." (ILC DARSWA commentaries 2001, 91).

There are three basic forms of reparations based on commission of internationally wrongful acts which are: restitution, compensation and satisfaction, but their combination is also possible. (UNGA Resolution 56/83, Art. 34). Reparations may vary qualitatively, but they do not have retributive caracter. The priority is assigned to the restitution, i.e. returning to previous condition *restitutio in integrum* as far as possible, while the area that cannot be covered by the institution of restitution, compensation will be paid. (Ortakovski and Milenkovska 2014, 130) which entails paying damages for financially estimated damage, which on its own integrates the types *damnum emergens* and *lucrum cesans.* (UNGA Resolution 56/83, Art. 36). Restitution is relatively unattainable ideal situation, so the compensation is the most common form of reparation (Posner and Sykes 2006, 46). In the cases when the effect of the wrongful act cannot be repaired by restitution and/or compensation (UNGA Resolution 56/83, Art. 39, Par. 1) and yet

moral damage is inflicted by causing feeling of injustice, the reparation is performed in the form of satisfaction, which means with public acknowledgment of the breach, an expression of regret, formal apology or a promise that the wrongful act will not be repeated. (Ortakovski and Milenkovska 2014, 131). A viable option is the combination of these types of reparation, as well, which is due to the fact that simultaneous or paralel, or intertwined infliction of material and moral damage is possible. A specified type of consequences that originate from the gross injury of the peremptory norms envisaged in the Article 40 of the Resolution 56/83 and serve as a corrective of such injury, are the ones provisioned with article 41 of the Resolution 56/83 – cooperation among states based on lawful means, directed towards cessation of the gross injury; then, prohibition both for recognizing a situation as lawful if it is created by a serious breach and for rendering aid or assistance in maintaining that situation. Key for this point is the Paragraph 3 of the Article 41, according to which the former acts or restrains are without prejudice to other consequences envisaged for the breach of the international obligation. (UNGA Resolution 56/83, Art. 41). This kind of narrow conceptualization of possible reactions in these articles infer to the point that for a gross injury, there is no substantial consequences of appropriate nature or of greater gravity, because the provisioned consequences even for cases of grave injury are still within the confines of the reparations, cessation of the wrongful act etc, but the real difference can be detected in the fact that third countries that are not directly injured, are not only given the possibility, but are obliged to react and not to be passive bystanders. (Tams and Asteriti 2013, 17), i.e. to polarize and effectuate their attitude towards the wrongdoers that breach international obligations that derive from *jus cogens*. Still, with such position, these obligations for third countries are vague, with level of ambiguity and lack of definition, which naturally, would subsequently reflect on an irregular or inconsistent empirical implementation.

PROCESSING, EFFECT AND IMPLEMENTATION OF THE RULES FOR INTERNATIONAL RESPONSIBILITY OF STATE

The relation, interdependence and apparent differences between the domestic and international law find their place in the problematic concerning responsibility of state - in the defining or establishing certain acts and their characteristics as wrongful according to international substantial law, as well as in the procedural issues such as the effect of the norms and application of legal remedies. The former aspect is depicted in the Article 3 of the Resolution 56/83 according to which in a most general manner is envisaged that the characterization of an act of the state as an internationally wrongful one is regulated by the international law and is not affected by the characterization of the same act as lawful by internal law. (UNGA Resolution 56/83, Art. 3). Although many acts are considered as wrongful both according to international and domestic law, often the international law imposes obligations that do not exist under domestic law and the international remedy for harmful acts that violate international law is then exclusive. (Posner and Sykes, 25).

Still, when the treatment of the wrongful behavior is determined as such according to the domestic law, the problematic question for implementation and enactment of international law and the usage of international remedies is greatly absolved – in some cases explicitly, with the rules that stipulate necessary exhaustion of all domestic legal remedies before bringing the claim before international court such as the case with the preconditions for bringing a claim before the European Court for Human Rights, compliant with the Article 35 of the European Convention on Human Rights. However, in some cases the necessity for previous exhaustion of domestic

remedies is not explicitly mentioned, but is implied from the general principle of international customary law (Shaw 2008, 597) for exhaustion of domestic remedies and this principle is based on the core of the act itself, its regime according to domestic and international law and to the sub-system in international law according to which the regulations are applied. For instance, presumably such provision should be contained in the UN Charter and the Statute of the International Court of Justice, but such explicit formulations that regulate this issue do not exist – only remotely and indirectly can the intention of the legislator be identified by the fact that the Statute mentions the sources according to which the ICJ decides, such as international conventions, customs etc, so presumably the treatment of the issue concerning exhaustion of domestic remedies is contained in some specific sources. In practice, there are controversial stances and actions regarding this issue which bring into contradiction for example, the states sovereignty, the rules for state immunity, rules for priority of usage of remedies and the rules for state's responsibility, especially in the cases when international criminal tribunals are established where this relation of the aforementioned constitutively complex aspects is an exceptional challenge to be resolved.

Anyhow, in the case of duality of remedies, internal and international, for the equally defined wrongful act, due attention should be paid to the stance that domestic remedies are superior for several reasons, but key is that the domestic legal systems dispose of greater coercive authority to enforce court decisions (Posner and Sykes 2006, 26) and of other procedural control mechanisms (for example, preliminary ensuring measures, etc.) The weaknesses of this standpoint are also insurmountable where special substance would be assigned to the argument of the subjective perception and the ethnocentric state interests when enacting the rules for responsibility of state, as well as the overlapping and contradiction of the rules for responsibility of state with the rule *nemo judex in causa sua*. Despite the complexity, the dichotomies and contradictions regarding this issue, the Resolution 56/83 in the Article 44 stipulates that the responsibility of state may not be invoked if the claim is one to which the rule of exhaustion of local remedies applies. (UNGA Resolution 56/83, Art. 44).

The concepts *erga omnes* and *jus cogens* affect the application of international responsibility. (Tams and Asteriti 2013, 27). *Erga omnes* concept has had an impact on the legal rules governing the implementation of responsibility. (Tams and Asteriti 2013, 16). Influenced by the erga omnes concept, contemporary international practice has embraced different forms of "public interest enforcment" in response to breaches of fundamental obligations of international law. (Tams and Asteriti 2013, 27). This has broadened the circle of states and international organizations, entitled to respond against an internationally wrongful act. (Tams and Asteriti 2013, 27). The injured state has the option to choose to dismiss its right to invoke other state's responsibility for injury of an *erga omnes* obligation, but the former state cannot inhibit other countries to bring such claims based on the Article 48 of the Resolution 56/83.

The initial open question referring to establishment of *erga omnes* principle in context of invocation of responsibility when peremptory norm is breached, after the 1969 Vienna Convention on the Law of Treaties, was whether the *erga omnes* principle would be applicable in practice, but the numerous cases throughout the years, until nowadays, have proven that the frequency of its referral is irrefutably functional. (Tams and Asteriti 2013, 2). As far as the active legitimacy as a subject of discourse is concerned, it was mentioned that in the Resolution 56/83, the implementation of the peremptory norms was emphasized, through the provisions stipulating that the obligations of the responsible state, might affect the whole international community.

Namely, when breach of a peremptory norm has occurred, legitimacy, i.e. the right to invoke responsibility, is assigned to any country, despite the fact that it hasn't experienced direct legal consequence. This setting of the legal creator (the ILC and the UNGA) is also indicative for determination of hierarchy of legal acts and by that for the positioning of the legal rules concerning the responsibility of state. Although in the Resolution 56/83 is explicitly expressed the hierarchical superiority of *lex specialis* in relation to this legal act as *lex generalis,* the point that isn't expressed and that we extrapolate of the overall international law, is that when an peremptory norm *jus cogens* is contained in a treaty, such treaty has the advantage. (Ortakovski and Milenkovska 2014, 55) in comparison to these general rules for determining responsibility of state. In practice, claims for responsibility are raised at many different levels of government, depending on their seriousness and on the general relations between the states concerned, moreover, the International Court of Justice has on occasion proved itself satisfied with rather more informal methods of responsibility invocation. (Crawford 2015, 68). The immunity of states, although by its contents originates from a fundamental principle – sovereign equality of states, practically represents a procedural impediment and is directly conflicted with the determination of state's responsibility. Even though in the Resolution 56/83 the states' immunity is implicitly waived when gross injury of *jus cogens* is concerned, still this remains an imprecise issue. The basic standpoint of the international law is that still, a general rule that would impose duty for immunity waiving does not exist, not even for the breaches of peremptory norms of international law (Tams and Asteriti 2013, 22), but it is rather predictable that there is a possibility in future to introduce waiving immunity in order to process the problematic of the area of the peremptory norms.

In addition, the question regarding the effect from the determined international state's responsibility over the implementation of such responsibility is set – more precisely, what the power of certain international institutions and factors in context of fragmented system of international law to impose restitutive justice is. For completion of the depiction, the argumentation referring to fragmentation of international law and relations is intriguing.

Fragmentation is a subject to multi-aspect critiques and one of the main arguments is the fact that it represents an effect of the endeavors of the powerful international factors (states, trade subjects, international organizations of various nature and area) to preserve their position on the international legal and political scene as well as the possibility to influence all types of relations, processes and world trends (economic, social, military, peace-keeping, etc.).The arguments for this position are that this tendency for conserving the dominant position of some states and for diminishing the uniformity of the international law are directly affected by the negative effects of the fragmentation. (Benvenisti and Downs 2007, 596). The most remarkable effects of that kind would be: creation of narrow, functionalistic institutions with limited scope of multilateral agreements which leads to decreased possibilities for the weaker actors to connect on many common grounds, thus diminishing their influential potential, but ever-present is also the effect of the absence of ultimate goal, ambiguous or variable confines and overlapping jurisdictions that enable absolution from responsibility of the powerful states for various reasons. (Benvenisti and Downs 2007, 597). Certainly, the counterarguments are valid, as well, those being for example, the exponentially succecful regulatory coordination among institutions, the expression of international political pluralism and the possibility to achieve higher results in the development of the international law and politics through competitiveness. (Benvenisti and Downs 2007, 597).

The answer is compound. Still, the fragmentation is a result of objectively inevitable processes and circumstances. It is partially due to the small number of integrative, holistic treaties, in contrast to the greater number of agreements with specific purpose and narrower concept, directed towards regulating exclusive area, i.e. segmented regulating of particular types of relations. This international practice stems from pragmatical needs, which means for the sake of functionality of the most frequent international legal traffic – the international agreements in the field of economy and more concretely of the trade, reparation of damage, labor relations etc; it is necessary to currently activate the subjects and forecast specific circumstances, therefore logically the necessity for myriad of trade agreements arises. While on the other hand, the strategic agreements (treaties), especially the ones with integrative concepts and broader platforms, the ones with elements of constitutional nature, as well as the ones that do not have predecessor in the tradition of international cooperation of the particular subjects that are signatories or are involved in the concept of the treaty are fewer in number and are characterized with a level of abstraction, with the tendency to establish general axiological and legal principles. In these group of legal documents can be enlisted those that penetrate in the sphere of codification and progress of international law.

Hence, the realization of the responsibility of the state has multilateral and relative character, dependent on the international legal subsystem which infers to a direct causal link between the fragmentation and the concept of international responsibility of state. Exceptional primary factors of influence on the realization of such state's responsibility, originating from fragmentation are: the enhanced success of dominant countries to proliferate and impose their own permanent interests as a negative point in correlation to the weaker subjects; but also, there is the factor of effectiveness of the instruments of the subsystems (as the case of ECtHR), as a positive one. These factors directly affect the undermining of the ILC efforts for uniformity and balanced concept of international responsibility of state.

CORRELATION BETWEEN THE INTERNATIONAL RESPONSIBILITY OF STATE AND THE INTERNATIONAL PUBLIC LAW

Gradual introduction of activity and significance of non-state actors in the action mechanisms of the international law diminishes the importance of the exclusive subjectivity of state and attracts academic attention, yet still, the state has the pedestal in this sphere, so indubitably stirs the interest concerning its place in the development of public law regimes.

The concept of state responsibility in international law basically refers to the protection of public rights, but the states enter into contractual interactions both with physical and legal persons, thus penetrating into private rights and obligations, so the question is to what extent may these be protected under the rules of state responsibility? (Crawford 2015, 74). The acts of state can equally affect private as well as public rights, so the differences arise from the applicability and enforceability of the law. (Crawford 2015, 74). Private rights can be elevated to the international level only if there is some special mechanism that converts the private law in public law (as in the case of diplomatic protection) or if a specific system or procedure is involved where jurisdiction of international court, arbitrage or tribunal is established (Crawford 2015, 74). In either case, the consent of the state against which enforcement of the private right is sought is to some extent required. (Crawford 2015, 75). Another aspect that implies strong correlation between international and domestic public legal and political processes is the perspective according to which some cases of criminal acts of the state might lead to an

obligation of the responsible state to change its domestic constitutional structure, to change its government, the constitution itself and to hold free elections in order to prevent the recurrence of criminal acts. (Nollkaemper 2009, 27). The ratio behind this standpoint is solid. On the other hand, beside the fact that domestic changes would undermine or eventually remove causes of international crimes, the prevailing opinion would be that there is a lack of data of state practice that would prove the necessity of a causal link between the previous criminal acts and the constitutional changes. (Nollkaemper 2009, 27).

In summary, it can be concluded that regardless of the nature of the concerned right with international connotation regarding state responsibility, the participation of the subject of the state as medium is necessary, with its instruments and capacities, in order to directly establish or to influence the specific international legal situations, relations and processes.

CONCLUSION

In conditions of the current international law system which is in a construction process, where numerous legal formulations are characterized with level of vagueness, ambiguity, generalization, even with dichotomies, and the ultimate instruments for implementation and coercion, which means consistent application of international law are greatly with problematic, disputable implementation and enforceability; the state's responsibility is a concept closest to establishment of an international legal order which would be based on clear rules for action. State responsibility represents a link and inter-phase between the state sovereignty and the teleology of international law and the establishment of the international legal order in general, as a global system for introducing functional rules of conduct of the international subjects.

When determining the international responsibility of the state, the quantification of the wrongfulness of the act done by the state is achieved according to the rules of international law. The peremptory norms *jus cogens* are of exceptional significance and gravity – their character directly affects the determination of active legitimacy of other states as subjects of the international law, as well as the categorization of the level of injury done by the state, according to international law and this significance is of special extent in the context of non-existent distinction between criminal and tortuous responsibility. Still, the narrow conceptualization of the category gross injury, mainly because of the relatively mild and vague consequences should be subjected to critique that it disavows the contents and the gravity of this type of injury. In this context, although the Resolution 56/ 83 entails secondary rules, the notion of damage has space for legal concretization in direction of differentiation of several types of damage by areas of legal regulation (environment, trade relations, criminal acts, etc.), with the possibility to accentuate or define exceptions for specific legal situations.

Since the determination of international responsibility of the state is done according the rules of international law, it is theoretically independent or preclusive regarding the domestic law, but on the other hand its implementation is dependent of the capacities and the instruments of the state. As far as the duality of legal remedies, domestic and international, for the same wrongful act are concerned, the domestic ones are superior and the internal legal systems dispose of greater coercive authority and procedural control mechanisms for enforcing decisions. Yet, regardless of the nature of the relevant right with international connotation tied to the concept of state responsibility, the participation of the subject of the state as a medium is necessary, with its instruments and capacities in order to directly establish or to influence the specific international legal situations, relations and processes. Hence, the role of the state is paramount. The reason for

this is the fact that the international community is still based on the classical-modern conceptions regarding the state, the sovereignty and international cooperation and not on the postmodernism.

Concurrent to the previous conclusion is the one that both the determination and the implementation and enforcement of the rules regarding international responsibility of state are directly subjected to the conditions of fragmentation of the system of international law.

An upside of the fragmentation is that it offers possibilities for regulation of certain areas of international legal traffic, thus creating a picture resembling climate of loyal competition in the economy. The negative implications are that the fragmentation only represents an opportunistic, alternative fashion of domination of world powers with the tendency of absorbing greater area of influence, in circumstances where the formal equality of states and the principle of respecting the state's sovereignty do not allow the great factors to aggressively impose their will in an unified international legal system, so they achieve their position by creation of stratum and functionalistic regulation of relations, where, in specific spheres they pose themselves as hegemons to a certain extent. From this second perspective, fragmentation gets pejorative attribute and we can conclude that it has negative influence on the uniformity and consistency of the concepts of certain categories of the international law. The legal systems vary in their contents and a unifying conception is necessary so that under equal circumstances, similar rights and obligations of same genesis should be realized. In this context, the UNGA and the ILC have made an effort for unification, if not for egalitarization of the definition of international responsibility of state by adopting general, secondary rules, thus affecting world's perception for this concept; yet the enactment of the rules regarding the state's responsibility is negatively influenced by the fragmentation.

On the other hand, the fragmentation offers benefits in terms of more effective operative instruments of some of the specific international legal subsystems, in comparison to what is offered by the general system of international law of the international community as a whole.

The correlation among the international community, the state and specific international legal subsystems are complementary to some extent and offer superior possibilities for international regulative and actionable coordination, but are also concurrent or in mutual conflict to some extent, which irrefutably generates the need for generality and unification of the legal documents and practice.

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THE INDIVIDUAL SOVEREIGNTY: CONCEPTUALIZATION AND MANIFESTATION

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Abstract

This paper is qualitative and theoretical research of the concept of sovereignty and the libertarian theory, particularly the concept of individual liberty. It represents a concept developing study, with a specific accent laid on the individual liberty, and the theoretically established concept of sovereignty. The research focus could be identified with the conceptualization and manifestation of the individual sovereignty, as a theoretical phenomenon that is not fully conceptualized and strictly defined. In the scope of this paper, content analysis method and comparative method are used. The analysis, comparison and synthesis refer to the theories of sovereignty and the theory of libertarianism, resulting in developing the concept of individual sovereignty and its socio-political manifestation.

Key words: sovereignty; individual liberty; power; state; individual sovereignty.

INTRODUCTION

This paper is qualitative and theoretical research of the concept of sovereignty and the libertarian theory, particularly the concept of individual liberty. It represents a concept developing study, with a specific accent laid on the individual liberty, and the theoretically established concept of sovereignty. The research focus could be identified with the conceptualization and manifestation of the individual sovereignty, as a phenomenon that is not fully conceptualized and strictly defined. In the scope of this paper, content analysis method and comparative method would be used. The analysis would refer to the theories of sovereignty and the theory of libertarianism. The comparative method would be used for comparison of these two theories. The paper would start with the analyze of the concept of sovereignty in its classical sense, its etymology and essence, the typology of sovereignty, the dimensions of sovereignty, the principles of sovereignty; would continue with analyzing the libertarianism as a specific theory, the idea of individual liberty, its principles and consequences; and in the end would finish with synthesis of the essence of the two theories resulting in conceptualization and manifestation of the individual sovereignty.

The first effort of defining and demystifying the potential concept of individual sovereignty would take place as a synthesis of the concept of sovereignty in its classical sense and the concept of individual liberty. The constitutive elements of the concept of individual liberty in classical sense would be transferred to the concept of sovereignty in classical sense. When the parallel is established, the constitutive elements of the both theory would potentially produce a new concept of individual sovereignty. After the conceptualization of the individual sovereignty, further operationalization would take part. The operationalization consists of the political manifestation in a certain potential political organization and social manifestation in

certain potential social consequence. In that way, the conceptualization and the manifestation of the concept would be done, and the concept could be listed among the other types and dimensions of sovereignty.

THE SOVEREIGNTY IN A CLASSICAL SENSE

Etymology and essence

The term *sovereignty* derives from Latin *superanus, supremus*, which means *the highest, superior, ultimate*, and from old French, representing characteristic attached to a subject – *supremacy* in certain domain. In that sense, the most general and etymological meaning of the term sovereignty is connected with *(political) supremacy*, or *ultimate, absolute, supreme will*. It is the *ultimate authority*. (Schmidt 1993, 11).

When it comes to *absolute, supreme will*, it goes hand in hand with ultimate *power*. From this pure rationalist analyze, emerges that sovereignty could represent power, understood in its broadest sense. The most common definition of power gives Max Weber, and it is defined "as the possibility of imposing one's will upon the behavior of other persons." (Galbraith 1995, 4-5). In John Kenneth Galbraith's typology of power, found in its *The Anatomy of Power*, there could be distinguished three kinds of power: *condign power*, *compensatory power* and *conditioned power*. (Galbraith 1995, 4). The term *supreme, ultimate, absolute* is narrowly connected to the concept of *condign power*. Galbraith defines the *condign power*, as:

> Wining submission by the ability to impose an alternative to the preferences of the individual or group that is sufficiently unpleasant or painful so that these preferences are abandoned. There is an overtone of punishment. The expected rebuke is usually too harsh, so the individual will endure, submit, or give into the power from fear or threat. The individual is aware of the submission via compulsion. (Galbraith 1995, 4-5).

From other perspective, the concept of *condign power*, in Ayn Rand's essay *Capitalism, the Unknown ideal*, is presented as a *political power*, or the power of threat, punishment, compulsion, or most general, the *power of institutionalized violence.* (Rand 1967, 53). In Rand typology of power, alongside the political power stands the *economic power*. Michael Mann, in his *The Source of Social power: Volume Two, The Rises of Classes and Nation-states*, is stating about that the *political power* "derives from the usefulness of territorial and centralized regulation." (Mann 2006, 9). He continues "political power means state power" (Mann 2006, 9), and determines it as "essentially authoritative, commanded and willed from a center." (Mann 2006, 9). The operationalized distinction between the all three most general types of power could be located in the *means* of power. Franz Oppenheimer, in his fundamental work *The State*, makes a distinction between *economic means* and *political means* (Oppenheimer 1926, 24-25); the last presenting means of violence, robbery, threat, as an operationalization of the *political power*. Or in Oppenheimer's words: "the state is fully developed political means." (Oppenheimer 1926, 276). The State is the final apparent product and manifestation of the further operationalization of the *political means*. In the sense of Max Weber, *the state* is human community, which successfully claims monopoly on legitimate use of physical coercion, on certain territory. (Fukuyama 2012, 24). In that sense, the state is a *violent, coercive* regulator of the *social* relations. Or in the words of Hans Hermann Hoppe (he uses government instead of state), in his

book *Democracy, the God that Failed,* the Government "is a territorial monopolist of compulsion – an agency which may engage in continual, institutionalized property right violations and the exploitation – in the form of expropriation, taxation and regulation of private property owners." (Hoppe 2007, 45). Also the state is personified by the *political elites*, which hold the *political authority*. In addition," the state is sovereign, or the supreme power, within its territory, and by definition the ultimate authority for all laws, i.e. binding rules supported by coercive sanctions." (Dosenrode 2007, 19). From this analysis it could be concluded that there are three concepts, connected to the broadest concept of *sovereignty*, derived from its etymological and essential meaning. *The state* emerged as the last phase in the process of *operationalization* and *political manifestation* of the concept of sovereignty. The process of operationalization moves in this direction, *sovereignty – political power – political means – state*. From the opposite perspective, the sovereignty is the ultimate conceptualization of *the state*, understood as a concept or as a manifestation. The *sovereignty triad* consists of: *political power, political means* and *the state*.

The origins

Jean Bodin is the first author, explicitly focusing and writing about sovereignty in his masterpiece *Six livres de la République*. He defines the sovereignty as an *unlimited*, *unique*, *irresponsible*, *perpetual*, *undivided* and *inalienable* power (Bodin, 1903), or as "absolute and perpetual power of a commonwealth." (Merriam 2001, 7). Bodin emphasizes that sovereignty, must reside in a single individual. (*Stanford Encyclopedia of Philosophy*). In that sense, the sovereignty could be identified with the ultimate (political) power of an individual. In the historical context, the individual with the ultimate (political) power represents the *monarch*. Sovereignty in Bodin's context gives directions and provides the justifications of the Monarch's political actions. The monarch's will is ultimate, unlimited, institutionalized in the form of political power and conceptualized in the new term of *sovereignty*. *Thomas Hobbes* is the second important author, mentioning the terms *sovereignty* and *sovereign* in his *Leviathan*. Following Bodin's tradition, Hobbes focuses on the personification of the political power in a society, emanated through the *Sovereign.* (Hobbes 2010, 143). The *Sovereign*, acts in the name of the society (its members), and its main function is providing security in it, through limiting individual's freedom of action and establishking strict (political) order, in the frame of *the state*, or *Leviathan*. *The Sovereign* represents embodiment of the *social will*, and its aspiration towards the foundation of the *Leviathan*, and at the same time, it remains bearer (Hobbes 2010, 143) of the pure political power. *The Sovereign* is the new form of the *pure core-state*, which should provide *justification* for the individual's restrictions. It could be concluded that the first broader and dominant meaning of the *sovereignty* is *absolute power* or *political power*, expressed in a *state*; on its territory, over individuals and objects located on it.

Typology

Generally defined, sovereignty involves specific elements attached to it, which could produce different types of it. Potential analyze of the types of sovereignty, would further produce an overall image and holistic definition of it, paying attention to the all elements that are incorporated in the concept and its various meanings. In the following part of the paper would be analyzed two elements of each type of sovereignty, the *source* of the sovereignty and the

political manifestation of the concept. The source of the sovereignty would represent the independent variable(s); the type of the sovereignty and the political manifestation in certain political organization would represent dependent variable(s). It could be distinguished several major types of sovereignty. These concepts would be analyzed purely theoretical, and there is a room for marginal empirical inconsistency.

The divine sovereignty represents the oldest narrower concept of sovereignty, with specific source of it. Divine sovereignty theory, or theocratic theory, locates the source of the sovereignty or the source of the political power in *God* – "*Omnia potestas a Deo"*. (Shkarik & Siljanovska 2009, VII Ch.). In the sense of this theory of sovereignty, *the God* is the source of the sovereignty, and it provides the *legitimacy* of *the Sovereign*. *The Sovereign*, have a right, which is originally delegated from god, to govern and articulate the political power over certain people, territory and objects. In that direction, *the Sovereign* is a representative of the god on the earth, and it is enforcer of the god's will on the earth. This theory emphasizes the duality of the power, the power on the heaven, and the power on earth, as an emanation of the previous one. In the context of Christian religious domination, this theory provides the justification for the emperor's rule. When it comes to the political manifestation of this type of sovereignty, it is always connected with the *monarchy*, as a specific political organization. The monarch is the ultimate *Sovereign*.

National sovereignty represents concept of the era of political modernism, and emerges as an opposed concept to the concept of divine sovereignty. In this sovereignty concept, the central position takes the concept of nation, which could be identified as the source of this type of sovereignty. The nation could be determined as a source of the political power, and it presents a *collective, undivided body*, broader than the individuals living on the state's territory. (Shkarik & Siljanovska 2009, VII Ch.). On the contrary, the nation could be defined as an *imagined political community*, which represents the *sovereign.* (Anderson 1998, 19). From this definition evolves that the nation as a sovereignty concept could be controversial, because it could be determined by the political power; it emerges as a result of the *modern state*. As a political manifestation of the concept of national sovereignty, the *Nation-state* arises, which is still the dominant form of political organization. The concept of national sovereignty is narrowly connected with the concept of popular sovereignty, and often they are interfering in the political praxis. *Popular sovereignty* is the most common and most referring type of sovereignty. The theory of the popular sovereignty emerges at the same time with the theory of the national sovereignty, and that is the main reason of their mutual interference. The source of the popular sovereignty could be identified with the *people*, living on the specific territory exposed to the direct effects of the certain political power. The founding father of the concept of popular sovereignty is Jean-Jack Rousseau. He is positioning *the people*, as the subject of the social contract, which gives a birth to the state body, and gives dynamics and will to it. (Rousseau 1978, 47). Following this statement, it could be concluded that every single individual is a party in the social contract and possess a part of the sovereignty. The sovereignty is incorporated in the *social will.* (Rousseau 1978, 22). Unlike the national sovereignty, the popular one, highlight the individual as a part of the *People*, and it is partially sovereign in its part, conceptualized through the *positive liberty.* (Berlin 2000, 50). In this frame, *the people* do not represent collective body, but sum of individuals, living on a certain place in a certain period. (Shkarik & Siljanovska 2009, VII Ch.). The popular sovereignty is actualized in the political organization, where *the people*, as sum of individuals, participate, directly or indirectly, in the process of political decision-making. The political manifestation of this concept is the *Republic*, as a form of political organization.

Working People sovereignty is a type of sovereignty, or particularly it is a type of *popular sovereignty*. The difference between the both is that the *Working People* appears as the source of the sovereignty, so the difference is mainly rhetoric. The political manifestation could be observed in the *Socialist Republic*. The typology of the sovereignty that results in various types of sovereignties, show another dimension of the concept of the sovereignty. This dimension is the *justification* of the political power possessed by certain individual and group – political elites, through the concept of sovereignty. The *sovereignty* (*political power*) in its essence stays *unchanged* and *not challenged*, but the *source* (*justification*) of it varies.

Dimensions

Along with the typology of sovereignty, the concept of sovereignty involves two different dimensions: *internal sovereignty* and *external sovereignty*. In this case, the context is the independent variable, which could be *domestic* or *international*, which determines the concept of sovereignty. The both dimensions of the concept of sovereignty are interrelated, determine each other, and represent preconditions for each other existence.

Internal sovereignty as a concept could be connected to the concept of sovereignty projected on certain state territory – *domestic context*. According to Stephen D. Krasner within the frames of his book *Sovereignty, Organized Hypocrisy*, *internal sovereignty* means "supremacy over all other authorities within territory and population." (Krasner 1999, 47). This particular concept, or the internal dimension of the sovereignty, is *oriented* towards the individuals living on the territory. The author Hannu Heinonen, determine the concept of internal sovereignty as a "degree of control exercised by public entities and the organization of authority within territorial boundaries." (Heinonen 2006, 11). The concept of *internal sovereignty* could be identified with the etymology and the essence of the sovereignty, as an *ultimate*, *absolute* power, or *political power* of *the sovereign* within the certain territory and population on that territory. According to the stated, the concept covers the freedom of action of *the sovereign* on the concrete territory, acting as a subject of *sovereignty*, over the objects of *sovereignty* – population and objects on the territory. Following this logic, the state, represented through *the sovereign*, is the subject of the sovereignty, and the individuals could be identified as the objects of the sovereignty. It could be concluded that in the theoretical framework of *internal sovereignty*, the state is the *subject of the sovereignty*, the holder of the political power, using it as an *instrument* for achieving its goals. The highest principle of internal sovereignty is *freedom of action* of the state, on its own territory.

External sovereignty represents a concept, which is examined in different context from the internal sovereignty – *the international context*. The international context involves states, international organizations, and other entities that could partially play a role of an international actor. The dominant and most active subject in the international relations is *the state* and the world order is *state-centric*, or *Westphalian*. In this international context, the concept of external sovereignty is *state-oriented*. Krasner determines the external sovereignty as "independence of outside authorities." (Krasner 1999, 47). Independence as a category represents the immunity of external, direct non-consensual action and in the case of the concept of *external sovereignty* and the state as its subject, the independence could be identified with *non-intervention* of other states in national issues, given through the basic principle of the international law – *non-interference in domestic affairs*. According to Heinonen, the external sovereignty is conceptualization of "the right of certain actors to enter into international agreements." (Heinonen 2006, 11). In this case,

the external sovereignty represents the ability of the states to engage in international voluntary relations, and further their capacity as an actor in the international context. The state has to express its consent for every relation that produces an effect on it. This statement is represented by the principle of *voluntarism in international affairs*.

In addition, three principles could be separated: *freedom of action*, *non-interference in domestic affairs* and *voluntarism in international affairs*. The mentioned principles are limited through some international norms – *jus cogens* norms. (Frckovski, Georgievski & Petrusevska 2012, 25). There is no need of a state's consent for adoption of these norms, but it is obliged to respect them. In that way, *jus cogens* norms represent a common legal framework of state's action within the international community. The expression of the concept of sovereignty is limited by these *jus cogens* norms.

THE INDIVIDUAL SOVEREIGNTY

The concept of individual sovereignty is relatively new concept, narrowly connected with some political theories and philosophies, focusing on the individual liberty at most. In that sense, the individual sovereignty would be analyzed through the theoretical framework of the theories of *libertarianism*, *individualist anarchism*, *classical liberalism* and other "*–isms*", which have certain attitude towards the individual liberty. The basic elements and principles of the concept of sovereignty in classical sense would be used in favor of developing the concept of individual sovereignty. The concept of individual sovereignty could be further operationalized in a certain political manifestation or political organization, based on this concept.

Libertarianism

Libertarianism represents a political theory and political philosophy which puts the individual as the central actor in social relations, and the individual liberty as the highest value in its axiological system. It is built on the heritage of classical, or the old liberalism. The central position in the theory of classical liberalism takes *the physical integrity of the individual*, *individual's property* and his *freedom of action.* (Locke, 2006). The libertarianism, as a theory stands on the *libertarian creed.* (Rothbard 2002, 22). In the words of Murray N. Rothbard, one of the greatest theorists and activists of individual liberty, in his book *For a New Liberty*:

> The libertarian creed rests upon one central axiom: that no man or group of men may aggress against the person or property of anyone else. This may be called the 'nonaggression axiom'. 'Aggression' is defined as the initiation of the use or threat of physical violence against the person or property of anyone else. Aggression is therefore synonymous with invasion. (Rothbard 2002, 22).

In the libertarian theory, the individual liberty is observed as the opposite principle of violence, or threat of violence. In that sense, the individual liberty is violated by using of violence, and the individual liberty refers to the absence of violence over the individual. In addition, the individual is free in the action he takes, as long as they are not *coercive*. The individual liberty could be projected as *the space* in which the individuals could act, and the *boundaries* of that space are other identical spaces. Defined by libertarians, the individual liberty is "an absence of interpersonal violence, the use of initiated force or violence, or its threat against the person or property of another." (Osterfeld 1986, 239). Also the individual liberty could be

defined as "the right of every human being to pursue his or her own happiness in him or her own way." (Palmer 2015, 31). The idea of individual liberty express the concept of *self-ownership*, which, "asserts the absolute right of each man, by virtue of his (or her) being, to "own" his or her own body; that is, to control the body free of coercive interference." (Rothbard 2002, 28). In Isaiah Berlin's conceptualization of the freedom in his book *Four Essays on Liberty*, the individual liberty corresponds with the *negative liberty*, or the liberty that gives an answer to the question: "[w]hat is the area within which the subject (a person or group of persons) is or should be left to do or be what he is able to do or to be, without interference by other persons?" (Berlin 2000, 50). The liberty is defined by its limits or the actions that limit it. Furthermore, the idea of individual liberty as the core-idea of libertarianism would be examined by its basic *principles* and the *consequences* it produces.

There are three *principles* of libertarianism: *individualism*, *voluntarism* and *non-interference*.

Individualism represents a principle of libertarianism which covers the epistemological and the ontological position of the relation between the individual being and social existence. The phenomena of individualism and collectivism, is conceptualized by Ervin Laszlo, in his book *Individualism, Collectivism and Political Power*. Furthermore, in the aspect of individualism, the individual being is primary, and the social existence is secondary; the man's individual being, will determine, or mold the shape of his social existence. (Laszlo 1963, 6). In that sense, "The society is being the sum total of the social existence of individual beings, it tends to be determined by individuals." (Laszlo 1963, 6). The principle of individualism is pointing to the "primacy of the individual human being as the fundamental moral unit, rather than the collective, whether state, class, race, or nation." (Palmer 2015, 31). From the point of the individualism, the individual is the central actor of all relations in the frame of one society (represented as a sum of individuals), it is the only subject of the social (interpersonal) relations, and every relation is shaped by his rights and duties in it. The basic *precondition* for establishing social (interpersonal) relation is the individual liberty.

Voluntarism represents a principle of libertarianism which covers the *individual consent* for establishing a social (interpersonal) relation. The individual consent for every relation the individual is engaged, embraces *absence of coercion*. The *voluntary exchange* is the central category in the principle of voluntarism. The exchange is voluntary, when it is "entirely unhampered by violence or threat of violence." (Rothbard 2009, 84). It is framed legally by *agreements*, and the ones that make the exchanges are called *contracts.* (Rothbard 2009, 91). In addition, according to Rothbard "the society based on voluntary contractual agreements is a *contractual society.*" (Rothbard 2009, 91). The central element of voluntarism covers "contract and voluntary exchange of goods and services, by individuals or groups, on the expectation of mutual benefit." (Chartier & Charles 2011, 3). The *voluntarism* stands for the statement that every individual engaged in some social (interpersonal) relation that produces some effects over him, should express his consent about the engagement. In other words, *voluntarism* as a principle stands for no coercive engaging in social (interpersonal) relations. The individual is free to choose in which relation he would enter, with the responsibility of the effects of that relation. The individual makes the final judgment of a potential establishing a relation, in which he or she would represent one side.

Non-interference represents a principle of libertarianism which covers the absence of *violent action* or *coercion* in the social (interpersonal) relations. In the part above, it is examined the essence of the state, as a *coercive, violent regulator* of social (interpersonal) relations. In this

sense, the non-interference principle points on state's *passivity* in the social (interpersonal relations). The interference of the state –the coercive interference, is pointed to the "free choices of individuals." (Rothbard 2009, 913). As defined, the individual liberty, as the absence of coercion or violence, the coercive interference is violating it. Also the non-interference principle relates to the state non-interference within property rights (Palmer 2009, 126), as the guarantee of the individual liberty. Concluding, the non-interference in individual liberty is a crucial principle for establishing system framed by the idea of individual liberty. In the libertarian logic, the individual has the ultimate right of *self-ownership* and the right of entering the social (interpersonal) relations he choose, *non-violently* and with an absence of coercion.

There are three *consequences* emerging after the implementation of the idea of individual liberty: *spontaneous order*, *non-coercive power* and *minimal government/private protective agencies*.

Spontaneous order refers to the first consequence potentially produced by fully implementation of the idea of individual liberty. The concept is also known by the names *voluntary order*, *unimposed order* (Bamyeh 2009, 28), *polycentric order* (Hayek 2011, 230) or *natural order.* (Hoppe 2007, 71). The concept of spontaneous order, where the individuals are the central actors, is opposed to the concept of *imposed order* (Bamyeh 2009, 28) or *conscious order*, where the order is established by the state – as a form of institution which regulates the social (interpersonal) relations with coercion. In that way, the spontaneous order could be defined as: "Significant and positive coordinating force – in which decentralized negotiations, exchanges, and entrepreneurship converge to produce large-scale coordination without, or beyond the capacity of, any deliberate plans or explicit common blueprints for social or economic development." (Chartier & Charles 2011, 2).

Also, the spontaneous order could be described as the product of *networked individual liberties*, where the voluntary individuals enter in non-coercive social (interpersonal) relations. In that sense, the spontaneous order is the result of the individual's preferences, instead of the state's projection. This kind of order doesn't mean that everyone does what he or she likes, but rather it is shaped, or organized by the voluntary agreements and by the *practical authority* (Bamyeh 2009, 27) - instead of absolute or permanent political authority. Using Adam Ferguson's phrase, "the concept of spontaneous market order is a product of *human action* but not *human design.*" (Chartier & Charles 2011, 389). The concept of spontaneous order covers the order which does not involve political authority constituting it, but instead it is based on the individual's wills. As it is putted by Pierre-Joseph Proudhon, the founding father of anarchism, the liberty emerges as the *mother* of the order, not as its *daughter*. (Proudhon, 1863). *Non-coercive power* represents the second consequence of potential establishing of the idea of individual liberty, which refers to the types of power which does not involve coercive power, understood as power based of using violence or threat with using violence. The *non-coercive power* corresponds with the Galbraith's *compensatory power* and *conditioned power*. Galbraith defines the *compensatory power* as "winning submission by the offer of affirmative reward, by the giving of something of value to the individual so submitting (…) [t]he individual is aware of the submission for a reward." (Galbraith 1995, 5). It could be concluded, that the *compensatory power* could be identified with the power of *property*, the power of *reward*, the power of *production*, or the power of *service*. In addition, Galbraith defines also, the *conditioned power* as "Wining submission by changing beliefs. Persuasion, education, habituation, social commitment to what seems natural, proper, right causes the individual to submit to the will of another or others. Submission reflects the preferred course; the fact of submission is not recognized."

(Galbraith 1995, 5-6). The *conditioned power* refers to the power of the ideas or the power of the persuasion. In the essence of these types of power is using non-violent method, which is totally opposite of the *condign power*, or the *political power*, as a power which is based on (non)institutionalized using of violence. In the typology of Ayn Rand, there are two types of power, the *political power* and the *economic power*. The first one is examined in the beginning of this paper. The economic power, according to Rand is the power of producing and selling the products. (Rand 1967, 52). In addition, it is the power expressed in positive manner, the power of reward, the power of motivation. (Rand 1967, 53). At the first sight it looks that the Rand's *economic power* and Galbraith's *compensatory power* are identical, but further analyze of the both could provide that the Rand's one is broader and incorporates the two types of Galbraith's powers, the *compensatory* and the *conditioned*. The producing, which the economic power is characterized by, does not refer only to some material goods, but also for ideas. In that sense, the market is not used only as an economic category, but rather as a social; it is not only a symbol of material exchange, but rather as comprehensive exchange of goods, which could be material and non-material. According to this statement, the *non-coercive power*, could be identified with the *economic power*, as an incorporating power of all powers which are not using the violence or the threat with violence as their method. In the libertarianism's judgment, the *economic power* is the only justified power for achieving individual or social goals. The Rand's *economic power* also is identical with Albert Jay Nock's concept of *social power.* (Rothbard 2009, 53). The individuals are totally free to use the *economic power*, instead of the *coercive* one. The further operationalization of the economic power results in *economic means* (Oppenheimer 1926, 25) which could also appear as a method of economic power, or as means for satisfying desires. (Oppenheimer 1926, 24).

Minimal government/Private protective agencies are the third consequence of the implementation of the idea of individual liberty. They refer to the political and legal frames of the established free society. The liberty that is attached to an individual is not *absolute*, but it is limited with the liberties of other individuals. The need for respecting the boundaries of each liberty could be satisfied with constituting *minimal government* or *private defense agencies*. These institutions are coercive by its nature, but they express the coercion as a response of coercion. Their function is protecting the individual's *physical integrity*, *property* and *liberty*. They articulate *condign power*, but in a manner of protection of the mentioned categories. In this context, it couldn't be referred to a political power, because the violence is not *initiatory*, but it is practiced as a *response*. Simply, *the minimal government* and *the private protective agencies* are institutions of *individual's protection*, not institutions of *social regulation.* On the other side, *the minimal government* and *the private protective agencies* differ among themselves. In the concept of *minimal government*, the Government represents *monopoly*. The concept of minimal government is usually adopted in the theories of *ultraminarchism*, *minarchism*, *objectivism* and *classical liberalism.* (Osterfeld 1986, 20-29). The theorists of these theories do not believe in the functionality of a fully *stateless society*. They believe in *minimal state*, or *night-watchmen state* (Nozick 1974, 26), who holds the monopoly of all use of *force.* (Nozick 1974, 26). Despite the *minarchists*, the *individualist anarchists*, *market anarchists* and *anarcho-capitalists* do believe in the idea of a fully *stateless society*. The idea of *private protective agency* or *dominant protective agency* (Nozick 1974, 25) is widely spread between the anarchists, as a concept who represents total *alternative* to the government. The *agencies* are private, they are offering protection, and the individuals could buy a protection; naive called *private government*. The main difference between the *minimal government*, or *the night-watchmen state* and the *private protective agency*

or *dominant protective agency*, is that the first one represents a monopoly, a single center; and in the case of the agencies, it could be developed *multiple centers of power.* (Osterfeld 1986, 356).

The expressed *principles* of the individual liberty, and the *consequences* of the potential implementation of the individual liberty, could be the base of conceptual development of the individual sovereignty, and its manifestation in the society.

Conceptualization and manifestation

The concept of individual sovereignty could be a theoretical amalgam that contains the concept of *sovereignty in its classical sense*, and the political theory of *libertarianism*, specifically the idea of individual liberty, manifested through its *principles* and *consequences.*

The *conceptualization* of individual sovereignty could be based on three principles:

- *Ultimate freedom of his actions*, as long as he or she is not using coercive actions;
- *Voluntary engaging* in every kind of social (interpersonal) relations that produces some effect on him or her;
- *Non-interference* of other individuals or group of individuals with coercive methods and threat of using coercive methods.

The concept of individual sovereignty could result in three gradual *manifestations*:

- Economic/social power, as the only justified kind of power in the social (interpersonal) relations between individuals or group of individuals;
- Spontaneous order, developed on individual's free wills;
- Minimal Government/Private protective agency, as an institution for protecting individual's physical integrity, property, liberty.

The *individual sovereignty triad* is constituted of:

- *Economic/social power*, as the operationalization of the individual sovereignty;
- *Economic means*, as non-coercive means for satisfying human's desires;
- *Spontaneous order*, as the manifestation of the individual sovereignty in the social (interpersonal) relations.

In the end, the *individual sovereignty* could be defined as a concept which gives an ultimate primacy of the will of the individual, limited by other individual's life, property and liberty; inviolable individual's physical integrity and property; politically manifested in *minimal government* or *private protective agency* and socially manifested in *spontaneous order*.

Table 1: Types of sovereignty (source: My own depiction regarding the sovereignty phenomenon)

Types of sovereignty	Source of the sovereignty	Manifestation in specific political organization
Divine sovereignty	God	Monarchy
National sovereignty	Nation (collective body)	Nation-state
Popular sovereignty	People (sum of individuals)	Republic
Working People sovereignty	Working People	Socialist Republic
Individual sovereignty	*Individual*	*Minimal government/ Private protective agency*

Table 2: Dimensions of sovereignty (source: My own depiction regarding the sovereignty phenomenon)

Dimensions of sovereignty	Internal sovereignty	External sovereignty	***Individual sovereignty***
Context	Domestic	International	*General*
Actor	The state	The state	*Individual*
Essence	Supremacy	Independence	*Individual liberty*
Principle	Freedom of action	Non-intervention/Voluntarism	*Free will/ Voluntarism/ Non-interference*
Socio-political manifestation	The State	International anarchy	*Spontaneous order*
Limitation	*Jus cogens* norms	*Jus cogens* norms	*Life, Property, Liberty*

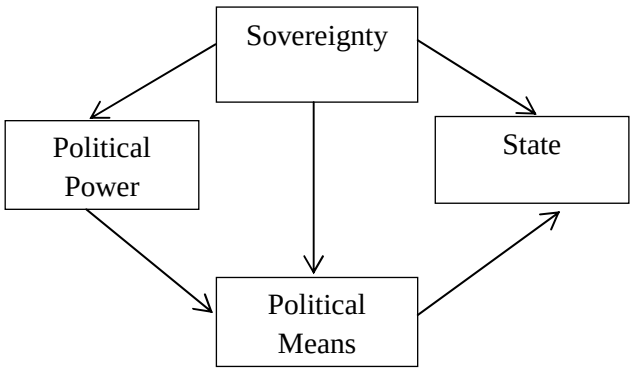

Figure 1: The sovereignty triad

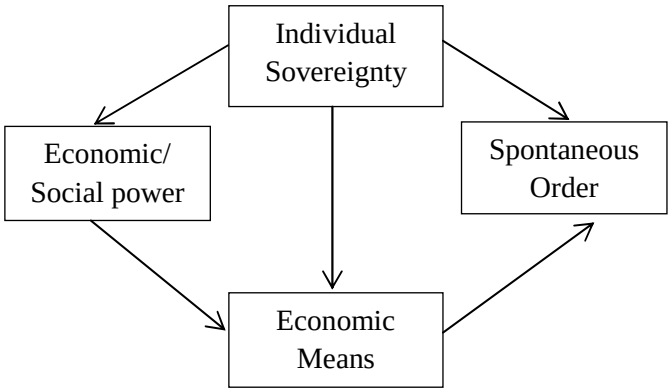

Figure 2: The individual sovereignty triad

CONCLUSION

It can be concluded that the conceptualization and manifestation of the individual sovereignty are done in the following way, first by analyze of the concepts of sovereignty and individual liberty, and finally with synthesis of the both. *The sovereignty in a classical sense* could be defined as the ultimate *political power*, practiced by *the state*, over a certain population and objects located on certain territory corresponding with the state's boundaries. *The sovereignty triad* consists of *political power*, *political means* and *the state*. *The sovereignty in classical sense*, determined of the *source* or the *justification* of it, could appear as *divine*, *national*, *popular* and *working people sovereignty*, each of it is manifested in different kind of *political organization*. Determined of the context, *domestic* or *international*, the sovereignty could have two dimensions, *internal* and *external*. The basic principles that the sovereignty rests are *freedom of action*, *non-interference in domestic affairs* and *voluntarism in international affairs*. The *limitations* of the sovereignty are the *jus cogens* norms.

The individual liberty could be defined as the space in which the individuals can act freely, which is characterized by an absence of using violence or threat with using violence. The three *basic principles* of *the individual liberty* are *individualism*, *voluntarism* and *non-interference*. The three *consequences* of a potential fully adoption of the idea of individual liberty are the emergence of *spontaneous order*, dominance of *social/economic power* in the social (interpersonal) relations and political organization operationalized in a *minimal government* or *private protective agency*.

The individual sovereignty could be defined as a concept which gives an ultimate primacy of the will of the individual, limited by other individual's life, property and liberty; inviolable individual's physical integrity and property; politically manifested in *minimal government* or *private protective agency* and socially manifested in *spontaneous order*. It is based on the principles of individual's *freedom of action*, *voluntarism* in the social (interpersonal) relations and *non-interference* with coercive means. *The individual sovereignty triad* consists of economic/social power, economic means and spontaneous order. The *limitations* of the individual sovereignty are the *physical integrity* of the individuals and their *property*.

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LIFE IN A BACKPACK: THE EU'S ASYLUM POLICIES AND ITS IMPACT ON THE MACEDONIAN ASYLUM LEGISLATION

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Abstract

Starting the Arab spring in 2010 and going through the latest and ongoing Syrian conflict and crises, Balkans and Macedonian railways have been and are a place where many human destinies cross their paths walking to the Member States of the European Union. On the other side, Macedonia is struggling with an influx of refugees, finding itself in a status quo position, even looking as it does not know how to solve the situation. Migrants were killed on railways every day not being able to use any kind of public transportation; their smuggling became a normal business for organized crime groups; Macedonian citizens started to earn money on refugees' misfortune. The paper using the comparative method and document analysis, gives an overview of the EU's legislation in the area, its improvement and current impact on things, all of it concluded with the Macedonian legal solutions regarding asylum and authors' recommendations.

Key words: asylum; European Union; Macedonia; migration; refugees.

INTRODUCTION: GLOBALIZATION AND MIGRATION TOWARDS THE EU USING THE BALKAN ROUTE

The definitions of globalization point to the interconnectedness of distant locations in shaping events and consequences, namely, the space-time compression due to technological innovations and cultural flows. Globalization is sometimes seen as a universalization and homogenization of culture in the American style consumer society or instead, taking form through fragmentation and localization as well as through marginalization of peripheries by the affluent centers. Along with the word "globalization," which has become part of everyday usage, there are also terms which attempt to describe the complexity and contradictions of globalization by saying the world is going through "fragmegration" or "glocalization". (Penttinen 2008, 3). Global mobility is:

> an intensely stratified phenomenon. Global corporate travelers can move 'in a world of safety that extends across national boundaries'. A large segment of the world population, on the other hand, has to rely on dangerous clandestine forms of travel. Global mobility is thus often marked with suspicion. In fact, an essential part of our globalizing condition is precisely the creation of mechanisms for distinguishing between 'good' and 'bad' mobilities, between what Bauman terms tourists and vagabonds. The tourists move because they find the world within their (global) reach irresistibly *attractive* – the vagabonds move because they find

> the world within their (local) reach unbearably *inhospitable*. Freedom of movement is available to a relatively small number of highly privileged individuals, while others are doomed to various forms of clandestine and imaginary travel. (Franko Aas 2007, 31).

While globalization and losing boundaries are reality for some, localization and closing boundaries are reality for others (most of human population). Such steps culminated with political sense and securitization of migration giving Europe, USA and Australia name as "continental fortresses", with forced borders, which was and is used by criminal groups. Seen as one of biggest moving forces of human development and progress, migration can be a result of many reasons, such as better economic possibilities, better education for their children, family reunification, protection, adventure etc. Also, migration is the main reason for language proliferation, mixing of cultures, cousins and ideas. Today, global migration is one of most important products of globalization, but exploitation of it by organized crime groups is its dark side. The term migration (in Latin: *migrare* - moving) is used to explain different kinds of mobility. In the Dictionary of the International Organization for Migration (IOM), the term migration is used to determine the movement of people or group of people through borders of a country and on its territory, regardless the distance passed, the reasons and circumstances in which it is happening. With such definition, every movement of people is defined, including the one of refugees, displaced persons, economic migrants and peoples moving because of family reunification. (Zarkovic and Mijalkovic 2012, 15). Today, the EU counts around 507 million of people, from which 20 million are non - EU citizens. Immigration to the Member States of the the EU mostly is because of work, study and research and family reunification. And those are reasons because of which someone's immigration process is seen as a legal one.

However, although migration process to the EU countries is based on strict common legal framework, it is inevitable to mention the benefits of such a step. Seen as a two way process, by respecting the rules and values of the receiving society, immigrants get opportunity to fully participate and include them in the mentioned society. On the other side, immigrants are filling gaps in every level of labor force, especially in areas where the EU lacks workers. And of course, everything at the end is connected to the changes in demographic structure of the EU area, where according to the researches undertaken by the Migration Policy Centre, the EU Member States will lose 33 million working people in the next 20 years, the old - age dependency ratio will increase from 28% to 44%, in contrary the percentage of young workers will decrease by 25%. But, starting the Arab spring in 2010 and going through the latest and ongoing Syrian conflict and crises, Balkans and Macedonian railways have been and still are a place where many human destinies cross their paths walking to the "promised land", in this case the Member States of the European Union. The everyday increase of the number of refugees entering the Union activated the legal mechanism resulting with changes in the Asylum Procedures Directive and the EURODAC Regulation which should now ensure a much more coherent system with a more efficient and faster actions and decisions. Using such situation, organized criminal groups opened a free market of illegality, meaning migrants can buy their illegal passage to the EU. Going through the Balkan Route (going from Turkey to Greece, Macedonia, Serbia and then to EU Member States), most of migrants' goals are rich Western European countries where they would ask for an asylum. Eurostat numbers show an increase of 138% in 2014 in comparison to 2013 in the number of illegal immigrants or in numbers 276.113 immigrants entered EU illegally. The irregular migration flows and in particular migration by sea, primarily along the

Central and Eastern Mediterranean routes, has increased exponentially over the past year. Over 220.000 migrants reached the EU through this route in 2014, representing an increase of 310% compared to 2013. (Frontex, 2015). This unprecedented influx of migrants and the ruthlessness of the smugglers, who often expose migrants to life-threatening risks and violence, require a strong response. It is estimated that around 3000 migrants have lost their lives in the Mediterranean Sea in 2014 (UNCHR, 2015). As a result of such trends which continued in 2015 with the conflicts in many places which are mostly countries of origin of the migrants, Member States in April 2015 (the Joint Foreign and Home Affairs Council) concluded the following in a ten points Action Plan:

1. Reinforce the Joint Operations in the Mediterranean, namely Triton and Poseidon, by increasing the financial resources and the number of assets. We will also extend their operational area, allowing us to intervene further, within the mandate of Frontex;
2. A systematic effort to capture and destroy vessels used by the smugglers. The positive results obtained with the "Atalanta" operation should inspire us to similar operations against smugglers in the Mediterranean;
3. EUROPOL, FRONTEX, EASO (European Asylum Support Office) and EUROJUST will meet regularly and work closely to gather information on smugglers *modus operandi*, to trace their funds and to assist in their investigation;
4. EASO to deploy teams in Italy and Greece for joint processing of asylum applications;
5. Member States to ensure fingerprinting of all migrants;
6. Consider options for an emergency relocation mechanism;
7. A EU wide voluntary pilot project on resettlement, offering a number of places to persons in need of protection;
8. Establish a new return programme for rapid return of irregular migrants coordinated by FRONTEX from frontline Member States;
9. Engagement with countries surrounding Libya through a joined effort between the Commission and the EEAS; initiatives in Niger have to be stepped up.
10. Deploy Immigration Liaison Officers (ILO) in key third countries, to gather intelligence on migratory flows and strengthen the role of the EU Delegations. (IP/15/4813).

In the next parts of the paper, we will analyze the EU asylum system, it's improvement in times of refugees' influx and of course, an overview of the new Macedonian asylum law will be made.

IT IS THE ONLY WAY OUT: ASYLUM SEEKERS, THE EU'S ASYLUM SYSTEM AND ITS MECHANISMS

The estimated number of asylum seekers in 2014 given by the UNHCR shows an increase of 53% from 2013. Namely in 2013, 1.08 million people applied for an asylum and in 2014, 1.66 million individual applications have been recorded. In 2014, industrialized countries were mostly the seeker destination country, with a 45% increase. (UNHCR 2014, 27). The 44 industrialized countries (28 EU Member States, Albania, Bosnia and Herzegovina, Iceland, Liechtenstein, Montenegro, Norway, Serbia and Kosovo (S/RES/1244 (1999)), Switzerland, the Republic of Macedonia and Turkey, as well as Australia, Canada, Japan, New Zealand, the Republic of Korea, and the United States of America) in 2014 together has 866.000 new asylum applications. The first half of 2015 does not show decrease in numbers. The 38 countries in

Europe received 714.300 claims, an increase of 47% compared to 2013 (485,000 claims). The 28 Member States of the European Union (EU) registered 570.800 new asylum claims in 2014, a 44% increase compared to 2013 (396.700). These 28 States together accounted for 80% of all new asylum claims registered in Europe. Germany and Sweden accounted for 30% and 13% of all asylum claims in the EU, respectively. (UNHCR Asylum Trends 2014, 7).

Having peaked in 1992 (672.000 applications in the EU-15) and again in 2001 (424.000 applications in the EU-27), the number of asylum applications within the EU-27 fell in successive years to just below 200.000 by 2006. Focusing just on applications from citizens of non-Member States, there was a gradual increase in the number of asylum applications within the EU-27 through to 2012, after which the rate of change quickened considerably as the number of asylum seekers rose to 431.000 in 2013 and 626.000 in 2014; this was the highest number of asylum applicants within the EU since the peak in 1992.

These latest figures for 2014 marked an increase of almost 195.000 applicants in relation to the previous year, in part due to a considerably higher number of applicants from Syria, Eritrea, Kosovo (UNSCR 1244/99), Afghanistan and Ukraine and to a lesser extent from Iraq, Serbia, Nigeria and the Gambia. (see: Figure 1) (Eurostat, 2015).

Asylum applicants from Syria rose to 122.000 in the EU-28 in 2014, which equated to 20% of the total from all non-Member States. Afghani citizens accounted for 7% of the total, while Kosovars and Eritrean citizens accounted for 6% and Serbians for 5%. Among the 30 main groups of citizenship of asylum applicants in the EU-28 in 2014, by far the largest relative increase compared to 2013 was recorded for individuals from Ukraine. There were also considerable increases in relative terms in the number of applicants from several African countries (The Gambia, Eritrea, Senegal, Mali, Sudan and Nigeria), two Middle Eastern countries (Syria and Iraq) and Afghanistan, as well as Western Balkan countries (Kosovo, Albania, and Bosnia and Herzegovina), and large increases of applicants from unknown origins and Stateless applicants.

The Common European Asylum System (CEAS) exists since 1999, changed in some aspects in 2013. Using CEAS, at first a person at an EU border applies for an asylum. The procedure is covered with the Asylum Procedures Directive.

The Asylum Procedures Directive sets out rules on the whole process of claiming asylum, including: how to apply, how the application will be examined, what help the asylum seeker will be given, how to appeal and whether the appeal will allow the person to stay on the territory, what can be done if the applicant absconds or how to deal with repeated applications. (EU 2014, 4). The new Directive entered into force on 21 July 2015 and set clearer rules on how to apply for asylum, asking specific conditions and arrangements at the borders, making procedures faster and more efficient (the asylum procedure should be longer than 6 months), also specific cases and people in need of help (as result of their characteristics) will receive adequate help and time to explain why they ask for asylum.

During the application each applicant's fingerprints are taken and sent to the EU's database EURODAC. The new EURODAC regulation entered into force on 20 July 2015 and it improves the effectiveness of the database which now can also be used by national police forces and Europol to compare fingerprints linked to criminal investigations with those contained in EURODAC. This will take place under strictly controlled circumstances and only for the purpose of the prevention, detection and investigation of serious crimes and terrorism.

The fingerprints taken by the applicant are used to help identify the country which is responsible for the asylum application. This area is regulated with the Dublin regulation brought

in 2003 and amended in 2014. The Dublin regulation establishes which member state is responsible for the examination of the asylum application. The criteria for establishing responsibility run, in hierarchical order, from family considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered the EU irregularly, or regularly.

Giving the registration after application is undertaken in no more than 3 working days, before which it should be checked whether the applicant can be qualified as refugee. When an applicant is identified as a refugee than he or she becomes eligible for asylum. During the procedure every applicant has obligations, but also enjoys certain range of human rights. Every applicant must report himself/herself to authorities in a specified time, they have to hand over documents in their possession which are important for the process, must inform authorities for his/her place of residence or changes of address. During the procedure, the applicant is given material for reception conditions (housing and food) if he/she does not have one. Those benefits are guaranteed with the Reception Conditions Directive.

Before taking the decision regarding a claim, every applicant must go to a personal interview, which takes place without any family member and should give a possibility to the applicant to clarify his/her claims regarding the asylum in the EU. The applicant is interviewed by a case worker who is trained in EU law, and he/she has the right of an interpreter. The result of the interview is to be determined if he or she is a refugee and can be given such a status or can be given a subsidiary protection. "Refugee" means:

> a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply. (Qualification Directive 2011, Article 2(d))

"Person eligible for subsidiary protection" means:

> a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country. (Qualification Directive 2011, Article 2(f))

The Qualification Directive establishes common grounds to grant international protection. Its provisions also foresee a series of rights on protection from refoulement, residence permits, travel documents, access to employment, access to education, social welfare, healthcare, access to accommodation, access to integration facilities, as well as specific provisions for children and vulnerable persons. When an applicant is granted refugee status or subsidiary protection, that person has certain rights such as access to a residence permit, to the labor market and to healthcare. When asylum is not granted, the applicant has right to appeal at the court with

a possibility for overturning the first instance decision. If the first instance decision is confirmed by the court, then the applicant may be returned to the country of origin or the country of transit. In 2014, close to half (45%) of EU-28 first instance asylum decisions resulted in positive outcomes, that is grants of refugee or subsidiary protection status, or an authorization to stay for humanitarian reasons; with note that all EU-28 data on decisions on asylum applications for 2014 exclude Austria. This share was considerably lower (18%) for final decisions (based on appeal or review).

For first instance decisions, some 56% of all positive decisions in the EU-28 in 2014 resulted in grants of refugee status, while for final decisions the share was somewhat higher, at 60%.In absolute numbers, a total of almost 104.000 persons were granted refugee status in the EU-28 in 2014 (first instance and final decisions), nearly 60.000 subsidiary protection status, and just over 20.000 authorization to stay for humanitarian reasons. Around 160.000 people received positive decisions at first instance in the EU-28 in 2014 (of which 90.000 were granted refugee status, 55.000 were granted subsidiary protection and 16.000 were granted humanitarian status); a further 23.000 people received positive final decisions in 2014 (of which nearly 14.000 were granted refugee status, 5000 subsidiary protection and 5000 humanitarian status).

The highest number of positive asylum decisions (first instance and final decisions) in 2014 was recorded in Germany (48.000), followed by Sweden (33.000), France and Italy (both 21.000), the United Kingdom (14.000) and the Netherlands (13.000). Altogether, these six Member States accounted for 81% of the total number of positive decisions issued in the EU-28. (see: Figure 2) (Eurostat, 2014).

LOST LIVES DOWN THE RAILWAY TRACKS: MIGRANT INFLUX IN MACEDONIA AND ITS LEGAL RESPONSE

An estimated 9 million Syrians have fled their homes since the outbreak of civil war in March 2011, taking refuge in neighboring countries or within Syria itself. According to the United Nations High Commissioner for Refugees (UNHCR), over 3 million have fled to Syria's immediate neighbors Turkey, Lebanon, Jordan and Iraq. 6.5 million are internally displaced within Syria. Meanwhile, under 150.000 Syrians have declared asylum in the European Union, while Member States have pledged to resettle a further 33 000 Syrians. The vast majority of these resettlement spots – 28.500 or 85% – are pledged by Germany (Syrian Refugees, 2015). As a result to such situation, Macedonia at one moment was struggling with an influx of refugees, finding itself in a status quo position, even looking as it does not know how to solve the situation. Migrants were victims on railways every day not being able to use any kind of public transportation; their smuggling became a normal business for organized crime groups; Macedonian citizens started earning money on refugees' misfortune (in one case, a migrant from Iraq, for a kilo of tomatoes, two bananas, 5 liters of water, two boxes of biscuits and two chocolates, which he bought in a shop in Demir Kapija, paid 30 Euros; because bicycles are mostly used by migrants, they can be bought in prices between 100 to 300 Euros).

Table 1: Number of discovered illegal immigrants in the Republic of Macedonia (2001 - 2013) (Source: Ministry of Internal Affairs of the Republic of Macedonia)

	Total	Illegal immigrants discovered on the border line	Illegal immigrants discovered in the territory of the country
2001	12660	3033	9627
2002	1192	684	508
2003	1185	477	708
2004	1608	732	876
2005	2358	1632	726
2006	4234	1866	2368
2007	2402	1919	483
2008	1.448	1080	368
2009	1415	1111	304
2010	1103	766	337
2011	469	209	260
2012	682	251	431
2013	1132	586	546

Table 1 gives an overview of illegal border crossings of Macedonian borders in 13 years period of time, showing that measures (maybe) have given positive results in suppression of illegal migration. Another problem mentioned above, which existed long before the migrant's influx was and still is the smuggling of migrants. The increased number of migrants just made this territory a fertile soil for this crime.

Table 2: Volume and dynamics of smuggling of migrants and number of its perpetrators in the Republic of Macedonia (2004 - 2013) (Source: Ministry of Internal Affairs of the Republic of Macedonia)

Year	Smuggling of migrants (418 - b)	Perpetrators
2004	21	28
2005	35	61
2006	23	54
2007	32	64
2008	36	96
2009	26	53
2010	27	58
2011	27	44
2012	40	70
2013	52	98
2014	92	166

In 2007, 85 Macedonian citizens have been reported, 2 were Swedish and Albanian, and 1 Moldavian and Turkish citizens. They were smuggling migrants to the Macedonian - Greek border. The 2 Swedish smugglers were smuggling migrants from Kosovo to Greece through the territory of Macedonia.

In 2008 smugglers organized smuggling of 173 migrants from Serbia (the region of Kumanovo) and Albania (Ohrid Lake or Struga region), to EU destinations (Greece or other European countries). Migrants for those services had to pay from 600 to 1500 Euros.

In 2009 through the KANIS action of the SECI Center, a smuggling group was reported. 12 Macedonian citizens (1 police officer) and 1 Serbian citizen for a longer period have smuggled migrants from China, through Serbia, Macedonia and Greece to the Western European countries. Also, in December 2009, Afghanistan migrants were found in special compartment of truck on the border crossing (Bogorodica). They were taken from the Greek port Patra.

In 2010, organized crime groups were transporting migrants from Greek and Albanian border to the Western EU countries. Also, in this year for the first time migrants were originating from countries affected by the Arab Spring.

In 2011 and 2012, Macedonia is still a transit country for illegal migrants coming from countries of the Middle East and North Africa.

2013 and 2014 are years when migrants are originating mostly from Syria, and in many cases, especially in 2014, migrants were victims of railway accidents (in cases when they were not using the smugglers' services).

The ongoing problem which every day ended up either with death on the railway tracks either with shootings between police and smugglers, asked for a fast action and solution. The temporary solution was found in legal response and action, changing the Macedonian Asylum Law (Law for Asylum and Temporary Protection).

The Macedonian Asylum Law is structured in IX parts. The first one defines the terms connected to asylum, such as to whom the right to asylum is guaranteed, who can be an asylum applicant, to whom a refugee status can be recognized and who is a person under subsidiary protection.

The second part regulates the procedure in giving asylum status to an applicant. In Macedonia, a person can claim its asylum application at the border or the nearest police station. With the changes from 18 June 2015, an applicant can claim his/her right to asylum beside the already mentioned places, also in the premises of the Department for asylum of the Center for reception of asylum applicants.

Also, the 2015 changes provide an opportunity for stating an intention for submitting an asylum claim. These changes give a migrant an opportunity at the border or at the territory of Macedonia to state his/her intention (to claim asylum) to a police officer. After such statement is given (verbally or in writing) the police officer issues a sample of the confirmation for the statement and directs the migrant to the Department for asylum to claim asylum. He/she has 72 hours to make such application.

In case of family reunification the claim can be submitted in any embassy of the Republic of Macedonia. The asylum claim is given verbally or in writing, the applicant is photographed and his/her fingerprints are taken. In 3 days from claiming asylum, to the applicant a confirmation for his/her claim will be given. Then the applicant has an obligation as soon as possible to submit every documentation he/she has regarding his/her claim.

The asylum procedure in Macedonia must end in six months counting from the day when the applicant gave his/her asylum claim.

The third chapter contains provisions regarding the ending of the right of asylum, explaining the reasons why a person cannot enjoy the right of asylum anymore.

Chapter IV regulates the kinds of documentation which can be given to an asylum applicant.

Also, the legal situation of applicants is object of this Law (part V). In this part there are provisions regarding applicants' rights and obligations.

Parts VI and VII are about the right of temporary protection and processing and protection of personal data of foreigners.

The eighth and ninth chapters contain provisions regarding which sanctions can be imposed in cases of violation of this law, and of course transitional and final provisions.

Since changes of the Asylum Law were used in practice (2nd of July) until July 31st 2015, 22.291 documents were given to migrants who claimed their intention to apply for asylum in Macedonia, although no one actually did. With such document, migrants can use public transport and they can buy tickets to Kumanovo or Tabanovce (Macedonia - Serbia border).

CONCLUSION

The trends of every day increase of migrants numbers moving towards the EU is an inevitable phenomenon knowing the level of Member States' democracy. But even with such democracy, the EU has shown its political face, especially now when Arab countries' refugees are seeking salvation up there. Not being able to reach a deal regarding the relocation of 40.000 migrants which are temporarily in Italy and Greece and 20.000 that will be resettled from countries outside the EU, once again showing the many different opinions for crucial and essential questions. On the other side, a problem of around 135.000 migrants in 2015 who have entered the EU is a 1.7 million migrants problem for Turkey which is much poorer country than EU-28. Also, the situation in Calais, France, where migrants on daily basis are trying to enter the tunnel under La Manche, also known as Eurotunnel, openly shows the EU's inability to find solution for the UK and France every day's quarrels on which side migrants should stay. And if the EU is not showing any progress in solving this migrant crisis, Macedonia is not even close to it. Macedonian politicians are saying that "it is still good because migrants are just transiting our country, but it will be bad it they start staying". The two articles changed in a Law are a step forward in helping these people, but it is not the end of it. Macedonia should make better connections with neighboring countries and the EU countries, especially those on the Balkan migrant route; public opinion must be changed through information, migrants should not be seen as a threat, but as an object that needs our help; a safe corridor for their passage must be made, because still they are victims of crimes (starting to property crimes, ending with trafficking in human beings). At the end, we will just conclude that migration has many faces, some are good, and some aren't. But what's most important for it is the side from which it's perceived. Perceiving it from the right side will help you see the good things it brings.

	Total (number)		Share in total (%)		Change 2013 to 2014		Ranking		
	2013	2014	2013	2014	Absolute (number)	Relative (%)	2013	2014	Change
Non-EU-28 total	431 090	625 920	100.0	100.0	194 830	45.2	-	-	-
Syria	49 980	122 115	11.6	19.5	72 135	144.3	1	1	0
Afghanistan	26 215	41 370	6.1	6.6	15 155	57.8	3	2	1
Kosovo (UNSCR 1244/99)	20 225	37 895	4.7	6.1	17 670	87.4	6	3	3
Eritrea	14 485	36 925	3.4	5.9	22 440	154.9	8	4	4
Serbia	22 360	30 840	5.2	4.9	8 480	37.9	4	5	-1
Pakistan	20 850	22 125	4.8	3.5	1 275	6.1	5	6	-1
Iraq	10 740	21 310	2.5	3.4	10 570	98.4	13	7	6
Nigeria	11 670	19 970	2.7	3.2	8 300	71.1	10	8	2
Russia	41 470	19 815	9.6	3.2	-21 655	-52.2	2	9	-7
Albania	11 065	16 825	2.6	2.7	5 760	52.1	11	10	1
Somalia	16 510	16 470	3.8	2.6	-40	-0.2	7	11	-4
Stateless	9 670	15 605	2.2	2.5	5 935	61.4	14	12	2
Ukraine	1 055	14 050	0.2	2.2	12 995	1 231.8	47	13	34
Mali	6 630	12 945	1.5	2.1	6 315	95.2	20	14	6
Bangladesh	9 140	11 680	2.1	1.9	2 540	27.8	15	15	0
Gambia, The	3 545	11 515	0.8	1.8	7 970	224.8	29	16	13
Iran	12 680	10 860	2.9	1.7	-1 820	-14.4	9	17	-8
Bosnia and Herzegovina	7 065	10 705	1.6	1.7	3 640	51.5	19	18	1
FYR of Macedonia	11 035	10 330	2.6	1.7	-705	-6.4	12	19	-7
Unknown	4 025	9 600	0.9	1.5	5 575	138.5	28	20	8
Georgia	9 090	8 560	2.1	1.4	-530	-5.8	16	21	-5
Dem. Rep. of Congo	8 390	7 340	1.9	1.2	-1 050	-12.5	17	22	-5
Algeria	7 080	6 700	1.6	1.1	-380	-5.4	18	23	-5
Senegal	2 965	6 435	0.7	1.0	3 470	117.0	32	24	8
Guinea	6 490	6 375	1.5	1.0	-115	-1.8	22	25	-3
Sudan	3 235	6 230	0.8	1.0	2 995	92.6	31	26	5
Armenia	5 235	5 700	1.2	0.9	465	8.9	26	27	-1
Sri Lanka	6 550	5 480	1.5	0.9	-1 070	-16.3	21	28	-7
China (including Hong Kong)	5 280	5 170	1.2	0.8	-110	-2.1	25	29	-4
Turkey	5 635	5 160	1.3	0.8	-475	-8.4	23	30	-7
Other non-EU-28	60 725	69 820	14.1	11.2	9 095	15.0	-	-	-

Source: Eurostat (online data code: migr_asyappctza)

Figure 1: Countries of origin of migrants entering in EU - 28 (Source: Eurostat, 2015)

	Total number of decisions	Positive decisions				Rejected
		Total	Refugee status	Subsidiary protection	Humanitarian reasons	
EU-28 (1)	132 405	23 295	13 885	4 620	4 790	109 110
Belgium	7 950	470	440	30	:	7 480
Bulgaria	20	20	5	15	:	5
Czech Republic	565	35	5	10	15	531
Denmark	1 785	290	160	130	0	1 495
Germany	44 335	6 995	4 330	935	1 730	37 340
Estonia	5	0	0	0	0	5
Ireland	210	95	90	5	:	115
Greece	7 665	1 880	805	295	775	5 785
Spain	920	15	0	0	10	905
France	37 085	5 825	4 245	1 580	:	31 260
Croatia	110	0	0	0	0	110
Italy	55	45	10	35	5	10
Cyprus	495	225	10	205	5	275
Latvia	35	0	0	0	:	35
Lithuania	15	5	0	5	0	10
Luxembourg	740	10	5	5	:	725
Hungary	840	40	20	15	5	800
Malta	260	35	10	25	0	225
Netherlands	1 445	700	260	340	100	745
Austria (2)	6 860	1 425	1 180	240	:	5 435
Poland	1 380	20	5	15	0	1 360
Portugal	95	0	0	0	:	95
Romania	170	35	5	30	0	135
Slovenia	70	0	0	0	:	65
Slovakia	60	5	0	0	0	55
Finland	210	165	75	60	30	45
Sweden	13 130	2 375	750	800	830	10 755
United Kingdom	12 750	4 015	2 645	85	1 285	8 735
Iceland	55	5	0	0	0	55
Liechtenstein	0	0	0	0	0	0
Norway	8 430	960	240	110	610	7 470
Switzerland	2 460	165	45	15	100	2 295

(1) Excluding decisions in Austria.
(2) 2013.
Source: Eurostat (online data code: migr_asydcfina)

Figure 2: Final decisions on (non-EU) asylum applications for 2014 (Source: Eurostat, 2015)

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THE EUROPEAN UNION MILITARY POWER: THE NEW CHALLENGES WITH OLD DILEMMAS

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Abstract

Recent crises show clearly that Europeans security depends on external developments. The Common Security and Defense Policy failed to provide security, while the European Union military missions were limited in terms of their scope. This inability threatens the interests and security of the member states. Exactly, this research explores the concept of military power of the EU. In order to elaborate anatomy of military power of the EU, the descriptive-analytic method is used. Military performance analysis proves that the EU is able to have the greatest impact in the global arena. The research shows that with the achievement of a political strategy among the stakeholder, on which the replacement of the consensus mechanism with an ordinary majority is predicted, the EU would be able to lead a proactive and efficient security policy.

Key words: EU; Military; Power; Mechanism; Institutions; Strategy.

INTRODUCTION

Having received the Nobel Peace prize in 2012 for decades of work, the European Union stands out on the world stage to be the main promoter of dialogue as a tool to solve conflicts., wars and not to mention the historical divisions that have followed the European continent with their violence affected citizens and European policy makers to use force only as a last resort. In retrospect, built on the ruins of World War II, protected by shields and the will of the United States of America, with the sole intent to drive back the Soviets, the EU saw the light of day, because it was able to re-establish itself somehow avoiding military question. On the other hand, with Germany and France in the heart of the Union, which had fought each other it was inconceivable that these two great military powers, can describe future together in a common army. Geostrategic transformations that have resulted from the end of the Cold War oblige us to analyze some facts and above all, to review the current situation in a more realistic way. Europe is facing many challenges in a world that is changing at a high speed; all the issues require a joint international response. The latest crisis in Ukraine, the risk of conflict of Syria and the need for protection from terrorism, dramatically shows the extent to which the welfare, safety and quality of life of Europeans depend on external developments. The EU should be a more effective global actor, ready to share responsibility for global security and take the lead in defining common responses and challenges but this cannot be achieved if the Union does not have a simple juristic mechanism that will not protect the interests of the close states but the geostrategic interests of the Union itself.

The crisis in Ukraine and Syria openly displayed weakness of the EU on military matters. Although a decade ago the EU had provided that in case of crisis it will settle one to two thousand troops. Therefore it is clear that Europe, after leaving the problem for decades, now it is

forced to take up its responsibilities. Hill argues that if the EU wants to become more convincing actor in the international arena, the gap should be closed, which means that European foreign policy should be indicated in its behavior, and not in aspirations and views. (Martinsen 2006, 1-2). This research examines the background of the demand for an independent army and European power, after the massacre of the Yugoslav wars and new challenges that threaten the continent. The Ukraine crisis and that of Syria, not to mention the rest, make Europe today to reconsider its approach on security and above all, to restore the fundamental issue, its future and its existence. However, this would be impossible if there will not become profound changes within the legal mechanisms of the EU.

A LITTLE BACKGROUND: EFFORTS TO CREATE THE EU MILITARY POWER

If we look back, the security and defense are the main topic of discussion during the EU project. For much of the European Union's existence, acquisition of a military power had been a strictly intangible concept. The French Government of Rene Pleven, was concerned by the resurgence of possible German militarism, in February 1951, in Paris, opened a conference on the establishment of Community Protection, including a 'European army'[1] which will never enter into force, because the French National Assembly refused to ratify (30 August 1954) after the French Communist Party and the Gaullist Party voted against. (George and Bache 2001, 69). At the time this initiative was considered as premature, and this failure dragged the project for an indefinite time. Although launched a number of successive initiatives during the Cold War, security and defense remained largely the domain of NATO and the United Nations. There had long been plans for a European Defense Community, for example, a pan-European collective mainly aimed towards countering a potentially unified Germany. However once West Germany joined NATO in 1955 these plans quickly fell from the agenda. Many attempts to introduce defense to the European agenda would follow the same pattern; initial enthusiasm before being disregarded. The Maastricht treaty saw the first concrete move towards the ratifying of an EU mission; containing an explicit reference to the framing of a joint defense policy but limited explanations of how this would be achieved. The Yugoslav Wars concentrated minds and led the EU to truly assess and question its military ineptitude for the first time. The brutality, media images of the appalling human rights abuses and enormous number of fatalities produced a harsh impetus for the move towards a concrete policy. The Amsterdam Treaty of 1995 was introduced as a direct response to the events in Yugoslavia and proved to be the most concrete strategy towards a militarized Europe. It created common strategies on key regions, greater capacity to act and more control over foreign policy instruments.

The headline goal was the establishment of the European Security and Defensive Policy which would be expanded by the Lisbon Treaty in 2009 to incorporate both input from both the council and the commission**.** A decisive component, likely introduced to appease the member states sense of sovereignty, was the "emergency brake", enabling states to voice opposition on the grounds of national interest. (Pipes 2014).

With the birth of the Common Security and Defense Policy (CSDP) in Saint-Malo in 1998, the Union has committed more than 20 crisis management operations, six of them

[1] Rene Pleven proposed the creation of a European army which would include 14 French divisions, 12 German, 11 Italian and three from Benelux countries with a common command.

militarily. It also adopted the European Security Strategy (ESS) in 2003 and its update in 2008, which was the missing link that gave purpose and direction sense CSDP (Martinsen 2009, 2).

THEORETICAL APPROACH: HOW TO UNDERSTAND THE EU MILITARY POWER?

There are many definitions about "power". It derives from the military power: the ability to use force. Having powerful resources such as raw materials, population, territory, economic power, military force, does not necessarily translate into "power" i.e. the ability to attain the outcome one wants. (Rois-Smith 2009, 279-280). Karen Smith outlines some instruments with which an actor can influence other actors: the use of persuasion, offering prizes, awards, threats. This definition is according to traditional principles. Joseph S. Nye distinguishes between two types of power: hard and soft. "Hard power" stems from military and economic strength and its characteristic is the use of "carrot" or "stick". "Hard power" is characterized by traditional state instruments, use of force and bribery. On the other hand "Soft power", is attractive, you force others to love the exact results that you want. (Ilik 2012, 82-83). The power of an actor depends on his ability to be a leading-example. If other actors respect and join his aspirations, then there is no need to use impacts and threats. "Soft power" can be derived from cultural and political values of a country. When the culture of a country includes universal values and its policies and promotes the values and interests that others receive, all this increases the likelihood of winning the desired results, due to attractive relations. (Haara 2013). Karen Smith suggests that this kind of actor uses and depends on military means to influence other actors, who wants unilateral military conclusion and foreign policy which is not democratic. Huntington believes that the use of military force is anti-humanitarian, whose purpose is to kill people in the most efficient manner. Huntington thinks about the purpose of the military power, its capacity should be used for humanitarian activities and other civic activities, but the military should not be engaged or be trained to perform such a role. (Krohn 2009). According to these definitions, only a dictatorial state could qualify as a pure military power, such as North Korea. But in this group we can also introduce US, due to its high military budget and unilateral actions in international relations. In addition, it is still reasonable to apply the concept of military power, because the role of military engagement as a whole seems to be changing in a new concept. The idea of territorial defense has changed into new idea. The EU as a whole does not have single army to ensure its protection. Consequently, the influence of Brussels is based mainly on the strength of its "soft", its capacity to influence without obligation. Therefore, moving away from the concept of the EU as a clean civilian power; is it possible to regard the EU as a military force, but in the new sense?

THE LEGAL FRAMEWORK FOR THE EU CRISIS MANAGEMENT OPERATIONS

As part of the Common Security and Defense Policy (CSDP), the EU has launched several operations on her part about military crisis management and civil rights. Here is a brief overview of the main elements of the legal framework on operations in the Lisbon Treaty. This means that civilian and military operations found their way into the primary legislation of the EU as a liability and legal obligation. (Vooren et al. 2013). Under Article 42 (1) of the Lisbon Treaty, "the common security policy and defense," gives the Union the operational capacity based on civil and military assets. The Union may use them on missions outside the EU for maintaining peace, conflict prevention and strengthening international security in accordance with the principles of the UN Charter". These missions are defined by Article 43 of this Treaty; they "shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peacekeeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilization" and can "contribute to the fight against terrorism, including the support of the third countries in combating terrorism in their territories." (Naert 2011).

We can only note that since 2009 and the Lisbon Treaty, Europe has not moved forward much on this strategic file. Actually, Lisbon constitutes a notable progression after Maastricht (1993, creation of the CFSP) and Saint-Malo (propositions for a European Policy of Security and Defense, CSDP, 1998) by introducing an important clause, that of mutual Defense, which formally ensures the assistance of other Union members if a state is the object of aggression. With these increased powers, the European Defense Agency (EDA) ensures better coordination than before, which the Permanent Structured Cooperation now complements. But such a commitment does not really equal a global strategy, and these commendable advances are insufficient to provide Europe the status of superpower, which would enable it to affect the order of things and to ensure that tomorrow's world is a better world. (Blin 2015).

THE MILITARY INTERVENTION AND ITS CAPACITY

However, as we already mentioned above, certain responsibilities of the EU include humanitarian and rescue tasks, peacekeeping tasks and tasks in military combat and crisis management, including peacemaking. On 31 March 2003, the EU launched its first military operation - peacekeeping mission in Macedonia. Operation 'Concordia' with 357 troops deployed (by all EU members except Ireland and Denmark, as well as 14 other countries - an average of 13 soldiers who took part by a Member State) in a small mountain country such as Macedonia, and successfully they kept the peace after the conflict in 2001. This was a big operation with political and modest symbolism compared to military size. By 2010, however, the EU launched a total of 27 missions in 16 countries on three continents. It is important to note that, from 27 missions, only six include military force. The EU has shown that it can deploy military forces in different variants. 7000 peacekeepers were sent to Bosnia and Herzegovina in 2004 and constitute the greatest strength that has ever been located. In 2003, 2000 troops were deployed in the Democratic Republic of Congo, without the help from NATO, which demonstrated the EU's ability to fight high-intensity battles against large rebel forces. 3700 soldiers were deployed to protect refugee camps in Chad and the Central African Republic in 2008 showed the EU's ability to overcome major challenges and logistical challenges of ecological environment. Anti-piracy

mission off the coast of Somalia shows that the EU takes a leading role in the maritime operation with many other countries (including those of NATO) that are coordinated from the headquarters of the EU. But despite the military capabilities proven in the field, the 'foot' of the EU military is not the main purpose of ESDP. (Hill and Smith 2011, 207-208). This is the first time that the EU has "military force", which means that it is prepared for military actions. Even if the EU has achieved its own independent military ability, the question arises whether the member states will ever agree on any joint intervention? Humanitarian mission in Somalia issued in a state of war or mission in Congo, in which the Union participated directly in military frontal battle without the help of NATO. All this implies that the inclusion of the EU staff in the battle front clearly rejects the concept of the EU, as a civil pure power. However, the situation would have been different, if there were a single European army. Europe as a military force will end their ability to challenge the American power on its continent, but also in the Caucasus and Africa. A related question is that, if the EU has reached its own independent military capability, will the Member States ever agree for any joint intervention?

WAR AND DIPLOMACY REMAIN STATE FRANCHISE

The rhetorical question of the former US secretary Henry Kissinger "[w]hom do I call if I want to call Europe," has expressed a lack of interaction and identity of the EU's Foreign Policy. Unfortunately, the practical experience proved this in many crises as in the former Yugoslavia, Iraq, Libya, Ukraine, all these showed real deep differences resulting share of the EU countries regarding the Foreign Policy and Security (CFSP). The EU remains a special and unique body of its kind, it does not work at the political level, according to classical schemes known as confederation or federation (like the US, Germany, Switzerland or Russia), in which foreign policy is exclusive federal jurisdiction and the role of federated states is limited. Although in a wide range of policy areas, the member states of the EU have a shared decision-making mechanism, thus significantly simplifying the construction of the compromise, the foreign policy does not work according to this reality. In the field of foreign policy, dominated by the concept of sovereignty and independence where the historical and geopolitical interests of the nations take advantage, the political game, requires support from all member states, the Brussels institutions have a simplistic role. Diplomacy, as well as war, remains a state completely exclusive and evaluated essentially as national sovereignty. The history of the EU operation has shown that the more files strengthen their political character, the more deepen interstate conflicts (the war in Iraq in 2003, military intervention in Mali in 2013, Syria in 2013, the issue of Kosovo, in which 5 Member States refuse its recognition, not to mention arguments over enlargement policies, etc.). The members' political views are different from each other which generate disagreements.

THE PROBLEM OF INSTITUTIONAL MECHANISMS: THE NEED FOR A HISTORICAL STRATEGY

The research question is whether the EU has managed to have a military force that meets its needs? Any military activity is likely to acquire a majority vote if not total support and so states' various vested interests and general foreign policy positions are likely to collide, for example, Germany's legendary pragmatism clashing with Britain's occasional notions of itself as a spreader of democracy.

Various mechanisms created over the years, that are affecting the foreign policy of the EU, have been assessed as ineffective for the complete fulfillment of this framework. Security Policy and the Common Defense, operates with a unanimous vote, which was never put into question, as long as there is no willingness to move to a qualified majority vote, to define a common foreign policy efficiently. The historical background of the crisis and conflicts has shown that national preferences take priority over those of Europe. Missing the political will, even the Lisbon Treaty failed to intervene in the political essence of this kind of functioning. The consensus among Member States was not to discuss this point. Creating a unifying mechanism would make possible the unification of attitudes of the Member States of the union in a single position. However, the Treaty of Lisbon enabled creating of some mechanisms to improve the decision-making process: the creation of the post of President of the Council; Office of the High Representative of the EU and the European Diplomatic Service Office. With the goal, the establishment of a functioning real political field, which will allow the strengthening of the European role in the international arena, the European countries should consider historical strategy that would make it easier EU participation in military conflicts. The proposed configurations, although appearing as a political necessity for strengthening the role of the EU diplomatic influence and its credibility in the international scene, it depends largely on consensus and finding a common political will. As long as we are dealing with a missing political will, the EU's diplomatic voice will be represented by following national interests that will prevail over European ones. The actual European crisis re-creates the same functional scheme. (Dita, 2014).

However, without a serious political strategy of Member States, without a common foreign policy without a military structure which will serve as an instrument of this strategy, Europe is not only doomed to play a secondary role, but above all, put their safety at risk by disturbing instability of regions like the Middle East which has already had consequences on the European continent. To overcome this important step for the Union itself political difficulties are great.

CONCLUSION

The former Belgian Prime Minister Marc Eysken metaphorically described the European Communities as an *economic giant, political dwarf* and *military worm.* This metaphor points to the fact that it is an economic actor, but on the other hand it is not able to be aggressive player in the military, because of foreign policy, which cannot form political strategic and moves with one voice. The EU appears as a "multi-perspective" actor, which is "under construction". It is developing as the integration process continues. So, as a result of this, the EU cannot be seen as a defined entity, but that changes and grows in its character and scope. This gives hope that the EU could change its future in the military. By the end of the Cold War until now the EU is working out how to take its place in the new world order as a powerful actor. The Union does not want to be in the shadow of other powerful actors in the world. Therefore, the construction of a joint military structure is a vital issue for the future of the European Union. In fact, a quick look at the current military landscape in Europe tells us much about the absence of a common vision and the lack of interoperability between national forces. A related question is that, if the EU has reached its own independent military capability, will the Member States ever agree for any joint intervention? Any military activity is likely to get a majority vote but hard to track the positions of consensus and general foreign policy is likely to collide. Due to this, the EU needs a strategy in a historic decision that will enable the EU to intervene militarily without the consent of the Member States but with a simple majority, in cases when the continent will be threatened or felt

threats within and outside Europe. Among other things, it would prevent the genocide, would defend itself from terrorist threats would provide security together with other global actors. It is a fact that Europe has often failed when it has been confused due to the inability of member states to coordinate and agree with each other. If it does not want to be a victim of external threats, Europe needs an efficient army. Therefore a European military force would be effective if it prevented conflicts within its territory and at the same time if it was necessary to intervene in other countries of the world, without being hindered by legal mechanisms.

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THE HEARTLAND THEORY OF SIR HALFORD JOHN MACKINDER: JUSTIFICATION OF FOREIGN POLICY OF THE UNITED STATES AND RUSSIA IN CENTRAL ASIA

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Abstract

The paper examines the foreign policy of the United States and Russia towards Central Asia by reviewing selective foreign policy discourses in the context of the Heartland theory. In effect, the central formulation of the study rests on this research question: to what extent is the Heartland theory influential in the foreign policy of the United States and Russia? The analysis is therefore organized by first conducting a comparative/contrast approach of USA and Russian policies via each other. The analysis seeks to suggest and/or establish some relationship between the predictions of the theory and current foreign policy relations. The study has reached to a conclusion that literature around the United States and Russia is indicative to the relevancy of Heartland theory.

Key words: Eurasia; Geo-politics; Central Asia.

INTRODUCTION

To understand the nature of international politics of the XXI century one can hardly avoid the importance to study the regional structuralization principles of the geopolitical and geo-strategic space of entire Eurasian. The need to revisit the regional geographic structure revived the conceptions formulated by Sir Halford John Mackinder in the early XX century. Mackinder is the founder of the modern geographical study. Over a decade ago he achieved widespread familiarity as the pioneer of the "science of geography". Mackinder argued that the vast zone of Central Asia had long been the geographical pivot of history and would remain the "pivot of the world's politics." (Pascal 2004, 330-336). He opined that as a consequence of this geographical legacy the history of Europe was ultimately subordinate to that of Asia. (Pascal 2004, 330-336). At the crossroads between geography, history and empire, this piece of work of Mackinder can be seen as a provocative reflection on international diplomacy, seeking to demonstrate the policy relevance of geography in aiding statecraft. (Pascal 2004, 330-336). Under this argument the paper seeks to find out the relevancy of the "Heartland Theory" of Mackinder in the foreign policy of the United States and Russia. The Heartland consists of Russia and Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan). The collapse of the USSR in 1991 followed the independence of the Central Asian states. The

emergence of these new republics constitutes the modern core of the pivot area of the thesis of Mackinder. (Margaret & Westenley 2008, 2). It is therefore pivotal in any geo-strategic analysis concerning the Heartland. Russia is, and historically has been, the regional hegemony of the Heartland. This paper examines the foreign policy of the United States and Russia towards Central Asia by reviewing selective foreign policy discourses in the context of the Heartland theory. In effect, the central formulation of the paper rests on this research question: to what extent is the Heartland theory influential in the foreign policy of the United States and Russia? From the International Relations perspective, there is a vacuum in the literature dealing directly with the Great Power politics in Central Asia region. There is also a void in the literature to be filled with new theoretical and methodological approaches to the study of neo-imperialism in the USA and Russian foreign policies in the ethnic conflicts and generally in the whole region. The basic purpose of this study is to bring a new perspective to the literature on above-mentioned issues. Initially, the paper provides a brief background to the theory and the region. This is followed by a thorough review of the current literatures on foreign policy of the United States and Russia in Central Asia. Thirdly, it compares and contrasts the various literatures by analyzing their use of geostrategic concepts to explain foreign policy issues involving Central Asia. Ultimately, the conclusion of the paper states that Central Asia is significant in the foreign policies of the United States and Russia because of its natural resources, the need to secure market access to those very resources, and its geo-strategic location in the "war on terror." The Heartland theory is therefore relevant as well as influential to the extent that foreign policy towards the region is still formulated with a conscious outlook for geopolitical advantage.

METHODS OF REVIEW AND ANALYSIS

The study is based on analytical model to make an assessment on to what extent the Heartland theory is influential in the foreign policy of the United States and Russia towards Central Asia. Methodologically, the study does not directly address the policies of the said countries but rather uses already available literatures of policy experts to research the foreign policy of the United States and Russia, test their relevance in context to Mackinderian philosophy, and to conclusively make a judgment based on the research question - to what extent is the Heartland theory influential/applicable? - that formulates the premise of the paper. As part of secondary source of data the paper uses Mackinder's thesis statement - *who rules the Heartland commands the world* - to conduct an analysis that contextualizes the assertions of the literatures, assesses the relevance of the theory in contemporary politics, and examines the implications thereof for great power geopolitics. Inconsistencies in the method are to be expected for two reasons. One, it does not contextualize policy through a microcosmic study of a single country in the region, and as such lacks a specific case study. Two, it assumes that conflict is endemic between the great powers. For these reasons, critics can argue that the method is flawed because it is overly realist in its application. The analysis is therefore organized by first conducting a comparative/contrast approach of USA and Russian policies via each other. Secondly, it addresses the Heartland Theory's applicability in the contemporary environment of international politics. While not attempting to propose the Heartland theory as a general model for foreign policy towards Central Asia, the analysis seeks to suggest and/or establish some relationship between the predictions of the theory and current foreign policy relations.

What does the Heartland theory exactly mean?

The Heartland theory of Mackinder placed the pivot in the center of the planet, which includes the river basins of the Volga, Yenisey, Amu Draya, Syr Draya, and two seas the Caspian and the Aral. (Mackinder 1943, 595-605). In the Heartland theory Mackinder actually engages geography in international politics both literally and figuratively. Literally the Heartland theory pointed out that, Eurasia is strategically the most advantageous geographical location (See: Figure 1). On the other hand figuratively this theory put emphasis on the centrality of the Eurasian region. Mackinder stated that in the context of the global geopolitical processes, the Eurasian continent is found in the center of the world politics. Under this statement he suggested that the state that dominated the Heartland would possess the necessary geopolitical and economic potential to ultimately control the world politics. Although the Heartland Theory faced much criticism in the decades since its publication, this paper does not aim to readdress these criticisms. Rather the study aim to justify how far the philosophy is rational as well as influential in the contemporary environment of international politics. More specifically the study intends to seek the influence of this theory in the foreign policy directions of the United States and Russia in Central Asia. In order to fulfill this aim the next section of this study review few selective literatures on foreign policy discourse of both states.

Literature Review

The following section of this study reviews various analyses of policy experts in order to comprehend a comprehensive understanding of the present geopolitical context of the foreign policy of the great powers towards central Asia. The study followed a comparative approach to review the relevant literatures. As a result the review rotates between the USA and Russia.

The USA policy

There are ample of literature regarding the policy of the USA in Central Asian countries. Each of these literature shares a common perception and that is: the engagement of the United States in Central Asia increase remarkably in the post 9/11 era. So, to understand the politics of the United States in the XXI century the period of post 9/11 is significant. In that case the statement of Colin Powell after the terrorist attack of 9/11 can best be exemplified – "the United States will remain interested in the long term security and stability of the region". (Andrew 2002, *cited in* Margaret & Westenley 2008, 8). Actually three broad concepts has polarized the scholars in assessing the foreign policy of the United States in the Central Asian region (i.e. geographical pluralism, establishment of liberal democracy and liberal or free market economy. Perception arise from these two concepts are - *firstly,* the foreign policy of the United States in this region stressed much emphasis on geographical stability. The policy umbrella of geographical stability also includes several other inputs like-the containment of terrorism and the suppression of Russia and to become a regional hegemon. *Secondly,* as a part of geo-economic strategy the United States want to ensure her access to the natural resources through pursuing a policy of cut-to-size Russian and Chinese influence in this region. (Nick 2007, 407). The United States has applied a pluralist approach in formulation its foreign policy priority areas in Central Europe. This argument has well proved by Stephen Blank and Marlene Laruelle. Blank in his book *United States and Central Asia in Central Asian Security: The New International Context,*

have showed that the foreign policy of the United States in Central Asia is based on three broad approach (i.e. to increase the supply of energy to the consumer, to prevent any one state from monopolizing the energy supply and to enhancing western ideas of liberal democracy throughout central Asian region). Blank contends that the idea of enhancing liberal democratic values will ultimately serve the purpose of US foreign policy goal in the Central Asia. (Blank 2001, 133). Likewise, Laruellenin his policy brief paper *US Central Asia Policy: Still American Mars versus European Venus?*, have identified two priority areas of the US involvement in Central Asia. In saying about the first priority area he argued that Afghanistan have become a driving force of the US involvement in Central Asia, with military bases in Uzbekisthan's Karshikhanabad and Kyrgyzstan's Manas. (Laruelle 2012, 2-4). Accordingly as a second aspect of the foreign policy United States in Central Asia is to increase the development and distribution of the energy resources and supply routes of this region.

Similarly scholar like Ariel Cohen in his article *USA Foreign Policy Interests and Human Rights in Central Asia*, also showed deep concern about the possibility of Sino-Russian cooperation. (Cohen 2001,6). Cohen try to indicate that such Sino-Russian cooperation bears the potentiality of increasing their sphere of influence within the Central Asian region and this will subsequently affect the presence of the United States in that particular region. (Cohen 2001, 6). So it may be said that if the possibility of such Sino-Russian co-operation turns into practicability then it will ultimately affects the foreign policy of the United States in this region.

The major challenge of the foreign policy of the United States in Central Asia is to keep a set of three states (i.e. China, Russia and Iran) completely away from this region. (Blank 2007, *cited in* Alcenat & Scott 2008, 9). Blank in his article *USA Interests in Central Asia and the Challenges to Them*, also asserted the importance of pipeline politics. In mentioning about the significance of pipeline politics he said the in that case Russian policy is quintessentially monopolistic. (Blank 2007, *cited in* Alcenat & Scott 2008, 9). The review of Blank's article makes it evident that as a consequence of the above assertion of Blank the United States should move to build military ties with the regional powers in order to secure her interest in the Central Asia. However Blank stressed much emphasis on building military ties with the Central Asian states as part of her foreign policy initiatives, the view of Cohen is quite different in that case. Review of the literature of Cohen makes it clear that he put much emphasis on promoting democratic institutions in Central Asia. (Cohen 2006, *cited in* Alcenat & Scott 2008, 10). He argued that promotion of democratic institutions and circulation of democratic ideals will facilitate the market access of the United States to this region. (Cohen; 2006, 6-10). The broad aspects of the foreign policy goals of the United States are summarized by Cohen under three words: security, energy and democracy. (Cohen 2006, *cited in* Alcenat & Scott 2008, 10). He argued that the United States must take active part in the Transportation Corridor Europe-Central Asia Program (TRACECA) which is a trade route devised by the European Union. (Cohen 2001, *cited in* Alcenat & Scott 2008, 10). Study also found the reflection of the assertion of Cohen in the congressional report *Central Asia's Security: Issues and Implications for USA Interests*, held by Nichol. (Nichol 2007, *cited in* Alcenat & Scott 2008, 10). The review of the report of Nichol indicates the European efforts and the incidents of poverty in the Central Asian region. In this report he stated that poverty in Central Asia has a severe implication on the socio-economic condition of this region and this ultimately create security problem. Nichol in his report also reflect the linkage between security and development. In his words, the socio-economic problem caused by poverty create security problem for the development. (Nichol 2007, *cited in* Alcenat & Scott 2008, 10).

A comparative review of the literature of both Nichol and Cohen it is found that, the argument of Nichol is hardly contrary to the statement of Cohen. Like Cohen, Nichol in his report argued that in the Central Asian region the priority areas of the foreign policy of the United States include fostering Western ideals of democracy, free market economy as well as assisting the development of oil and other natural resources. (Nichol 2007, *cited in* Alcenat & Scott 2008, 10).

The mentioned works stressed much emphasis on the access of the United States to energy resource of Central Asia. Access to energy resource alone may not fulfill the foreign policy goal of the United States in this region. In that case Christopher Fettweis comes as a critic of what Cohen argued in the above study. Fettweis contends that the argument of Cohen is not at all rational if the contemporary environment of international politics is to be justified. Fettweis justified contemporary international politics as it is void of great-power conflicts. Based on such justification he stated that there is no need of a balance between East and West in the system and therefore the geo-political view of Mackinder is obsolete. Fettweis put much emphasis on dominance of the United States in the global economic sphere. He argued that global economy will pave the way of access of the United States to the energy supply of Central Asia.

So it is evident from the above discussion that in these literatures the scholars contend that the formulation of foreign policy of the United States in Central Asia is just an effort to spread democracy to enhance market accessibility of the Unite States to natural resources of Central Asia. The reviews hardly find any argument among the scholars regarding the necessity of establishment of the United States presence through NATO and military personnel except to combat terrorism. Scholars like Blank, Cohen, Fettweis argued that at present the military presence in this region is only temporary and just for combating terrorism. Based on this argument they contends that geo-political theory of Mackinder in that sense is not in fact influential as the environment of global economy is already ensure the market access of the United States to this region.

The Russian Policy

The review of literatures on Russian foreign policy in Central Asia is indicating the intention of political and economic domination. All the literatures on Russian foreign policy are asserting that Russian is trying to reshape her backyard political and economic influence in this region as near-abroad. (Jonson 2001, 95). Study has found the Russian foreign policy in Central Asia is bifurcated in its perspectives to include dynamics of state and domestic influences. (Jonson 2001, 95). How far the Russian foreign policy in Central Asia is driven by contradictory pressures or not is clearly analyzed by Peter Rutland in his *Paradigms for Russian Policy in the Caspian Region*. Rutland identified two contradictory character of Russian foreign policy in this region (i.e. to cooperate with and to oppose the USA penetration into the region). A pluralist approach including the policy of free market economy is noticeable in the foreign policy of Russia. (Rutland 2000, *cited in* Alcenat & Scott 2008, 11). The Russian foreign policy is not free from institutional rivalry marked by political elites. Such political elites are interested to preserve economic monopoly over Russia, the region, and the expulsion of USA influence. In addition, scholars on Russian foreign policy also argued that there exists a policy paradigm that strangles the GUUAM (Georgian-Ukraine-Uzbekistan-Azerbaijan-Moldova) axis economically, thereby exerting influence over the region and lessening USA involvement. (Rutland 2000, 163).

As such Russian foreign policy in Central Asia can be termed as a conflictive paradigm where no single model can explain the grand pursuit of Russian policy. The domestic political environments as well as the economic agencies are divided among themselves in the process of policy formulation. Due to the lack of an integrated policy formulation process Russia is therefore "confused" in its policy objectives towards the Central Asian region. Despite such confusion of policy formulation, one thing is common in Russian foreign policy and that is the deployment of political, military, and economic tools to advance its interests in the Central Asian region. (Rutland 2000, 171-73). This simplest concept of Russian foreign policy in Central Asia can be termed as neo-imperialist approach. (Rutland; 2000, 171-73). Rutland argued that the domestic economic actor of Russia has a great interest in maintaining energy monopoly in Central Asia. (Rutland 2000, 169-71). An implication of such interest of the domestic economics is prevalent in the foreign policy decision making process of Russia towards Central Asia. However Rutland stated that economic actors influence the policy process of Russia more than the military because of an interest to maintaining energy monopoly, there is also a consensus to advance Russian interests in opposition to USA efforts to penetrate the region, thereby making Russian policy in the region ambiguous. (Rutland 2000, 169-71). A similar view on the foreign policy of Russia is also found in the article of Lena Jonson. This scholar in his paper titled- *Russia and Central Asia* has argued that Russia's foreign policy can best be understood in the context of its efforts to prevent outsiders from gaining influence in the Central Asian states. (Jonson 2001, 114).The United States is a major concern from Russia. In Central Asian region the political, economic and social interest of Russia are often challenged by the United States. (Jonson 2001, 98). Moreover the political elite of Russia are of the view that "through weakening its influence in the region the Western policy constitutes a challenge to Russia." (Jonson 2001, 115). As such the issue of containing any external influence in Central Asia is still reflective in the foreign policy of Russia. Through its foreign policy formulation Russia wants to strengthen its status as a regional power through averting the external powers, particularly the United States. Jonson argued that, Russia uses geography as an aid to its statecraft, engaging China as strategic power to counter USA influence (Jonson 2001, 115). However the foreign policy of Russia sought to prevent a power vacuum that would enable increase engagement of the United States, Jonson in his paper mentioned that Russian influence in the Central Asian region is decreasing gradually. This assertion of Jonson is proved as legitimate due to the waning influence of Russia to convince the states to join its security umbrella. Jonson in his paper postulates that despite the treaty of the Commonwealth of Independent States (CIS), states are still cooperating with NATO's Partnership for Peace (Jonson 2001, 109). Moreover the CIS states are now also showing their reluctance to integrate force with Russia (Jonson 2001, 119-120).Jonson argued that increasing trends of the Western influence marked as the cause of the gradual waning of Russian dominance over the region (Jonson 2001 119-120).The inability to build domestic political consensus at national level is the main cause of the decreasing influence of Russia in this region. (Jonson 2001, 119-120).

Bobo Lo in his *Frontiers New and Old: Russia's Policy in Central Asia* agree with the statement of Peter Jonson. He argued that Central Asia is critical to Russian foreign policy of establishing itself as a leading player in the Eurasian Heartland, and as an independent center of global power alongside the United States and China (Lo 2015, 1). Lo identified the basic purpose of Russian foreign policy in Central Asia is to ensure a primary right of influence over the affairs of ex-Soviet Republics (Lo 2015, 1). Considering the contemporary world politics it is almost difficult to predict how far Russia will be able to pursue such foreign policy ambition.

From review of various literatures on Russian foreign policy in this region it is evident that Central Asian states like Kazakhstan and Uzbekistan is no longer passive object of great power diplomacy, but increasingly assertive actors. Most importantly the United States will remain a key factor in the region, even after the withdrawal of NATO combat troops from Afghanistan. Moreover China is translating its powerful economic influence into a broader strategic presence. As such in spite of its fanfare surrounding the Eurasian Union, the position of Russia is weakening gradually (Lo 2015, 3). Lo further argued that the capacity of Russia to dictate to others is remarkably reduced due to power competition among the great powers. Accordingly the threat to Russian security is proliferating. This caused Moscow to face hard struggle if it is to avoid a sharp decline of its influence in Central Asia (Lo 2015, 3). Serhei Gretsky expressed an opposite view than that of Jonson and Bobo Lo. He argued that "Central Asia's destiny is in the hands of Moscow." (Gretsky 1997, 21-22). According to Gretsky the main motive of Russian foreign policy in Central Asia is to reduce competition over natural resources (Gretsky 1997, 8-9). Craig Oliphant in his *Russia's Role and Interests in Central Asia* also stated in line with Serhei Gretsky. He outlined that in Central Asia over the past 20 years or more the situation has fluctuated. Obituaries, though, about the demise of Russia's place in the region would seem to be premature (Jonson 1998 *cited in* Oliphant 2013, 1). Whereas Jonson argued that Russian influence in Central Asia is decreasing, Craig Oliphant stated that the desire of Russia to strengthen its role in this region is again intensifying in a selective way (Oliphant 2013, 1). However Craig Oliphant has identified the selective ways of the increasing trends of Russian influence in Central Asia (i.e. the focus around customs union and the envisaged plan that this should also involve Kyrgyzstan and Tajikistan is a clear market intention), he is not sure about what the longer term picture holds and how viable these plans will prove not least against the backcloth of leadership change that will inevitably and eventually come to the countries in the region and the implications stemming from those changes (Oliphant 2013, 1). Craig Oliphant has identified the geostrategic location of the region with its immense hydrocarbon reserves as the main cause of considerable interest from external actors. He argued that, the balance sheet would still place Russia as the most prominent external power in Central Asia, in terms of primarily 1) its high level political relationships, 2) its security cooperation in the region, and 3) arguably, its range of investment projects in these countries. The review selective literatures on Russian foreign policy in Central Asia reveal that both Rutland and Jonson characterize Russian policy as not overly unified. They argued that despite such uniformity in Russian foreign policy decision making process towards Central Asia the Russian leaders are still ingrained in a consensus towards Western aggress and the reinstating of Russian dominance. A contradiction is also exists between the views of Jonson and Gretsky. While Jonson opined that Russian influence in Central Asia is waning, Gretsky argued that the region's fate is still dependent on Russia but only to the extent of the integrative impact of Russian policy.

The relevancy of Heartland Theory in Great Power Politics

Study from the perspective of geo-strategy reveals that in geo-politics there exist endemic powers at two influential levels: that of the domestic and the state. This endemic powers consolidate their influence to the respective policies of the USA and Russia (Alcenat and Scott 2008, 18). Therefore, geo-strategy is not entirely immune to domestic participation since it implies a vast concept to deal with. The extensive push for geopolitical pluralism by the United States in the region can best be exemplified in that case. Any initiative by the United States to

open the market access in Central Asia implies that this state is targeted for the exploration of multinational energy companies. The efforts of domination for the exploration of natural resources are also apparent in the case of Russia. Study found that Russia wants to have pipelines be transported through its territory. However the Russian energy companies are working on behalf of market interests, they often constrain the behavior of the state. Under the above assertion it is hardly possible to say that the Heartland theory of Mackinder is obsolete. However, considering the great power politics in Central Asia critics argued that Mackinderian analysis is not rational because it assumes conflict in a system where there is none. Such argument of the critics is hardly found out because a variety of literatures repeatedly cites the geostrategic importance for USA security in fighting terrorism and preventing Russian dominance over oil production and transportation. Accordingly after making a review of selective literature the study found that various scholarly analyses attest to the fact that Russia builds regional alliances with Iran and China to stabilize its hegemony and prevent external influence from the United States. The relevancy of the Heartland Theory of Mackinder is also found as evident in an article which was published in the Oil & Gas Journal, in the post-Cold War political "struggle between Russia and the West conflict may [be determined] by who controls the oil reserves in Eurasia." (Alcenat and Scott 2008, 19). From the political view, the declarative statement of the first Bush Administration that the "United States has deemed it a vital interest to prevent any power or group from dominating the Eurasian landmass" (Fettweis, 2003, 109-129) demonstrates that the obsolescence of Mackinderian theory is irrelevant.

Simultaneously the Russian official cited a similar concern by stating that: "[w]estern policy constitutes a challenge for Russia's regional dominance." (Jonson 2001, 115-116). So at this stance it could be said that American fear of Russia is not irrational. The leadership interest of the United States in Central Asia would further disprove the claim of the irrelevance of the theory. As for instance, Vice-President Richard Cheney's (who also served as CEO of the oil supply corporation, Halliburton) statement that: "I cannot think of a time when we have had a region emerge as suddenly to become as strategically significant as the Caspian", or former secretary of energy Bill Richardson's evaluation that: "we're trying to move these newly independent countries toward the West. We would like to see them reliant on Western commercial and political interests rather than going on path influenced by Russia. Such statements of the leaders not only represent the national conception of the United States but also the domestic conceptions." (Kleveman 2003, 4-6). The United States and Russia formulate their respective foreign policy towards Central Asia in line with two different aspects. Whereas the United States followed an offensive policy towards Central Asia, Russian policy direction towards this region is found as quite defensive. The present study has found that there exists a conflict over energy security between the United States and Russia. The nature of the conflict between Russia and the United States is considered in this study as critical which is therefore not inevitable or a phenomenon only restricted to armed conflicts. In studying the nature of great power politics in Central Asia the study has found the growth of consumerism combined with the economization of international affairs. Such economization of world affairs caused the United States and Russia to move for raw materials/natural resources and it is evident from the analysis Philippe Le Billon who termed this competitive move between them as "resource wars." (Billon 2006, 204). Both the United States and Russia wants to gain their market interest in Central Asia at highest level. Based on this argument it is found that the stance of United States is considerably offensive in that it utilizes the GUUAM as a strategic alliance and promotes democracy to balance market favor on its side.

To maximize its economic power the foreign policy of the United States is directed through different political outlets through containing Russian sphere of influence in this region. Study has argued that the Russian foreign policy towards Central Asia is just a reaction of what the United States has pursued. Through such policy reaction Kremlin attempts to strengthen its hold in a 'near-abroad' policy that sees the region as its backyard. Geo-strategically the Central Asian region is very important for both the United States and Russia. Russia wants to control the Central Asian landmass to maintain its control over the natural resources. Likewise Russia, the United States wants to maximize their accessibility to the natural resources of this region by containing Russia. The Heartland theory falls short of grasping the context of that influence.

To put it into perspective, the literature shows that Central Asia is considered as very influential to each power. However, in light of Mackinder's notion of "the actual balance at any given time," the literature shows that geographic proximity has made Russia as the dominant power. Economically, it already controls many export routes for the shipment of natural gas and oil to western markets. On the contrary, the USA effort is likely to remain what it is now: promoting a market economy for the diversification of energy supply, whereby Russian monopoly will be broken.

CONCLUSION

The study has reached to a conclusion that literature around the United States and Russia is indicative to the relevancy of Heartland theory. The study has used the "Geographical Pivot" thesis of Sir Halford J. Mackinder as an analogy to present day foreign policy of USA and Russia regarding Central Asia and found that the foreign policy discourses of both states deals greatly with the philosophy of Mackinder. This reveals that the Heartland theory is still influential in foreign policy outlook of the United States and Russia in Central Asia. Competition for gaining control over natural resources between Russia and the United States together with geo-political and strategic factors characterized the geopolitics of Central Asia. Control over natural resources as well as market access is indeed the main motto of the foreign policy direction of both states. It is evident from the above study that such foreign policy directions are followed by the Heartland Theory of Mackinder. In fact it may be said that, outlined in 1904 through his speech, the "Heartland theory" was a founding moment for geo-politics. His argument regarding the control of the Eurasian landmass (Europe, Asia and the Middle East), is still considered as the major geo-political prize.

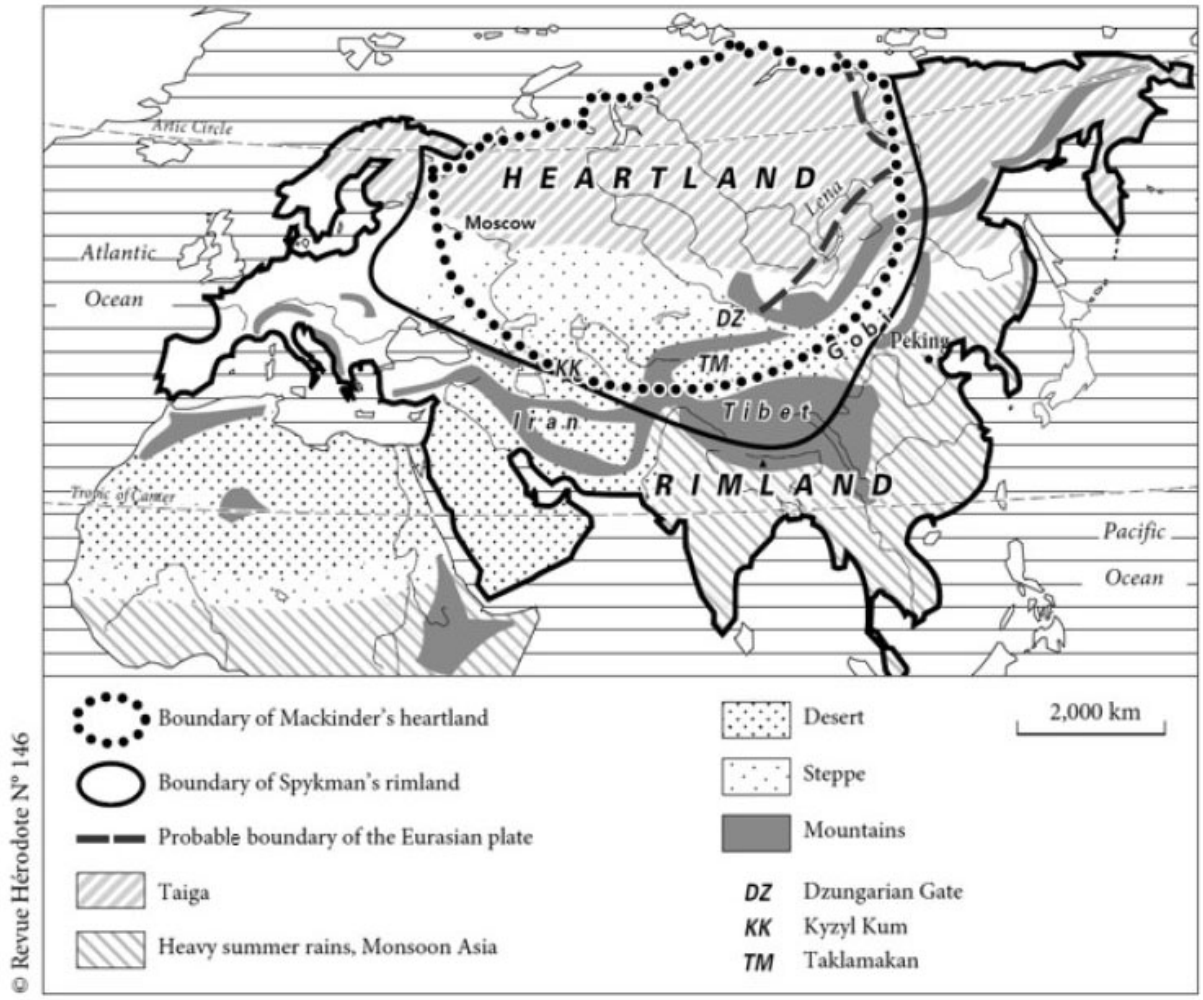

Figure 1: Heartland Theory of Sir Halford Mackinder (Yves Lacoste, Le pivot géographique de l'histoire: une lecture critique, *Hérodote* 3/2012 (No 146-147) , p. 139-158)

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Review paper
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THE INFLUENCE OF PUBLIC DIPLOMACY ON THE STATES VISIBILITY IN THE INTERNATIONAL RELATIONS

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Abstract

The attention of this paper focuses on international relations and the impact of public. This paper focuses on international relations and the impact of public diplomacy. The main goal of this study is to analyze the modern instruments of Public diplomacy that are available to countries aiming to achieve three goals in realizing their national interests: first, to overcome negative images from their past, second, to disseminate their values and model of governing and, third, which is most frequently the case, made widely known their comparative economic and trade advantages for foreign investment. Having in mind the Macedonian example, some analysts, when talking about the introduction of EU to the, citizens, believe that they do not sufficiently explain what it means membership in Euro-Atlantic structures. The Republic of Macedonia shall be used as a reference to the case study in the thesis where numerous practical examples are applied to Public diplomacy in the country recent past record in the field of public diplomacy.

Keywords: Public diplomacy; International Relations; USA; Poland; Macedonia; Czech Republic.

INTRODUCTION

Through our research, we shall portray the influence of Public diplomacy as a tool for upgrading visibility of democratic societies. Through comparative analysis, we shall portray the essence and purpose of diplomacy, followed by practical application of Public diplomacy and its main functions. Also it is underline the fine line that separates through ideological and realistic difference between Public diplomacy and propaganda of all sorts. Ideally, the difference between both models is difficult to distinguish, depending on society at hand, but by outlining the pros and cons of both models of communication and how they are used or abused by public media, such findings will be portrayed in detail.

The United States of America (USA) considered to be the champion of democracy, will give us an excellent comparative example in the concept of public diplomacy. Through such examples, as one of the most effective public diplomacy, comparative examples will be taken from three countries in the region (Hungary, Poland and Czech Republic) that were formally undemocratic in accordance to some international norms for diplomacy. Finally an attempt will be to analyze the bold approach to Public diplomacy by the Republic of Macedonia. The USA concept will be divided by itself in two parts. First part will be the USA Public diplomacy and the second will be United States Public diplomacy in a Post-9/11 World. The model of the

Republic of Hungary will be presented by interviews and content analysis. The Polish model will try to explain how Poland used Public diplomacy in forming the perception for the country in the eyes of the most influential western European countries and how it helped Poland's EU accession process. The model of the Czech Republic will deal with the history of promotion and Public diplomacy activities in Czechoslovakia and the Czech Republic, the Czech institutions that are participating in conducting Public diplomacy and finally their new strategy from 1997. The final and most important aspect of this thesis will focus on the admirable approach to Public diplomacy by the Republic of Macedonia. Its presentation at the end will be done through culture promotion, promoting of investment opportunities if the country, as well promotion of the tourism and hospitality. The final remarks and the conclusion will summarize the whole thesis and conclude the findings.

WHAT IS PUBLIC DIPLOMACY?

Diplomacy is the management of International Relations through negotiations or the method by which these relations are adjusted or managed. As stated by Gilboa and Eytan (2001), the policies set forth by democratic governments are followed by skilled diplomats to achieve maximum set objectives (national interests) with a minimum of costs in a system of politics where war remains a possibility. (Gilboa 2001, 10). Public diplomacy has been addressed by many names (cultural diplomacy, media diplomacy, public information, internal broadcasting, education and cultural programs, and political action), all having the same function. Diplomacy provides proper means of influencing foreign publics without the use of force. The now-defunct USA Information Agency defined Public diplomacy as "promoting the national interest and the national security of the United States through understanding, informing, and influencing foreign publics and broadening dialogue between American citizens and institutions and their counterparts abroad." (What is Public Diplomacy?, 2002).

The renowned political scientist Harold Lasswell, like the French scholar Jacques Ellul and the public relations guru Edward Bernays, believed that propaganda is a tool or weapon of modern technological society and that no one propaganda prevails, only competition. Lasswell wrote: "propaganda as a mere tool is no more moral or immoral than a pump handle...the only effective weapon against propaganda on behalf of one policy seems to be propaganda on behalf of an alternative." (Snow, 2012). Public diplomacy, like propaganda, is linked to coercive power. Consider the most referenced term of public diplomacy, soft power, coined by Joseph Nye. Public diplomacy, or diplomacy to publics, puts human interaction front and center in far less manipulative ways than propaganda. Ideally, the target audience is more like a *pro-sumer* (proactive consumer) consuming messages from the sender that ranges from a public affairs officer to the head of a nongovernmental organization, but also proactively responding and persuading back in a two-way exchange of ideas.

THE USA PUBLIC DIPLOMACY

The United States of America (USA) has long sought to influence people in administration and diplomats of foreign countries through democratic Public diplomacy efforts. Public diplomacy provides a foreign policy complement to traditional government-to-government diplomacy, which are dominated by official interaction carried out between professional diplomats. Unlike the public affairs, which focuses on well-designed and

choreographed communications, aimed at activities that are intended primarily to inform and influence domestic media and the American people, the USA Public diplomacy includes efforts to interact directly with the citizens, community and civic leaders, journalists, and other opinion leaders of another country. Public diplomacy seeks to influence society's attitudes and actions in supporting USA policies and national interests.

The Public diplomacy is often viewed as having a long-term perspective that requires working through the exchange of people and ideas to build lasting relationships and understanding. This is may be seen in a society such as the United States where and its culture, values, and policies do influence livelihood of the population. Such tools of healthy Public diplomacy include people-to-people contact; expert speaker programs; art and cultural performances; books and literature; radio and television broadcasting and movies; and, more recently, the Internet. In contrast, traditional diplomacy involves the strong representation of USA policies to foreign governments, analysis and reporting of a foreign government's activities, attitudes, and trends that affect USA interests. There is a growing concern among many in the executive branch, the Congress, the media, and other foreign policy observers, however, that the United States has lost its Public diplomacy capacity to successfully respond to today's international challenges in supporting the accomplishment of the USA national interests.

Public diplomacy capacity and capabilities atrophied in the years following the dissolution of the Soviet Union in 1991. The USA Public diplomacy efforts were carried out primarily by the US Information Agency (USIA), created in 1953, as well as the USA non-military international broadcasting by entities such as Voice of America, Radio Free Europe, and Radio Liberty. These entities had been well resourced throughout the Cold War, however with the end of the Soviet threat, those resources dwindled as it was believed that there was no ideological fight still to win. Many analysts believe that the United States generally placed Public diplomacy on a "back burner" as a relic of the Cold War. In 1999, the newly adopted legislation abolished USIA and folded its responsibilities into the State Department, again with reduced resources for public diplomacy. After the 9/11 terrorist attacks, and with USA combat operations in Iraq and Afghanistan, interest in Public diplomacy as a foreign policy and national security tool was renewed. Concerns about the events in the Middle East focused the attention of policy makers on the need for a sound, well-resourced Public diplomacy program.

This concern was heightened by the realization that the worldwide perception of the United States has declined considerably in recent years with the United States often being considered among the most distrusted and dangerous countries in the world. As the United States sought to revitalize its Public diplomacy initiatives, it became clear the changes in the new world order and changes caused by the Internet revolution and information technology in general created new dynamic for USA Public diplomacy initiatives. The world of international communications and information sharing is undergoing revolutionary changes at remarkable speeds. The rapid increase in available sources of information, through the proliferation of global and regional broadcasters using satellite technologies, as well as the global reach of news and information websites on the Internet, has diversified and complicated the shaping of attitudes of foreign populations. Individual communicators now have the ability to influence large numbers of people on a global scale through social networking, providing a direct challenge to the importance of traditional information media and actors.

Traditional media, such as newspapers, have created online interactive exchanges between providers and consumers of information by allowing readers to comment on news reporting. New online social media networks such as weblogs, Twitter, MySpace, and Facebook

allow individuals to connect with one-another on a global scale, providing opportunities for "many-to-many" exchanges of information that bypass the "one-to-many" sources that formally dominated the information landscape.

THE PUBLIC DIPLOMACY OF SMALL STATES

Among the main contributors to the theme of Public diplomacy belong above all major powers and in the first place USA. Very active is also Great Britain or the European Union (EU), now. Majority of literature also deal with Public diplomacy from the point of view of powers and the character of Public diplomacy accomplished by small or medium-sized states was really not in the center of attention. There are foremost small states that can benefit from using Public diplomacy in its foreign policy, but the character differs.

The Hungarian model

Hungary once part of the Soviet bloc, which gained the EU status after the end of the Cold War in 1989 and as an empire during the XVIII century, is very versatile with the power of mass communication. The aggressiveness with which Hungary defied the Soviets has been accredited to insurgent use of media. Even as the government tried to control broadcasting, contraband VHS tapes of banned foreign news correspondents were smuggled in the country and spread uncontrollably, which helped "sustain the desire for freedom among its people." (Edwards 2001, 281). The government tried to counter Radio Free Europe, broadcasts by the USA to foster rebellion against communism, with Radio Moscow, but should have jammed the signal instead. In the Eighties, the Communist party sensed their impending doom and tried to salvage itself by incorporating the opposition on live television. The anti-Communist groups manipulated these events shown on national television into platforms to communicate their own causes. This collective memory of how to use media for a political agenda strengthens Hungary as it navigates the uncharted terrain of Public diplomacy with countries from which they had been isolated for over forty years. In 1989, the European Commission (EC) decided against the backdrop of the fall of the Berlin Wall to support the transition of former communist states to capitalist democracies. Accordingly, the EC decided to coordinate aid to Poland and Hungary from the most industrialized countries on the continent and to create a package of assistance since known as the PHARE Program, an acronym for Poland, Hungary Actions for Economic Reconstruction. According to the Fact Sheet on Hungary issued by the Ministry of Foreign Affairs in Budapest (2000), the Hungarian foreign ministry adopted proprietary dynamic communication strategy in 1995 creatively dubbed the "Government Communication Strategy Preparing Accession to the European Union." (Baker 2001, 412). The requirements for accession to the EU hammered out at the Copenhagen summit are threefold, with only one condition out of the candidates' control:

> stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union, [and] the ability to take on the obligations of membership, including adherence to the aims of political, economic, and monetary union. (Lippert and Umbach 2005, 77).

These criteria, of course, are contingent upon the EU's "capacity to absorb new members, while maintaining the momentum of European integration." (Lippert and Umbach 2005, 77). The Hungarian PR campaign's budget consisted of hundreds of millions of Hungarian forints supplemented by $3.4 million Euros made available for the same communications purpose from PHARE for 1997 to 2000. The foreign ministry was proud that, according to opinion polls, Hungarian society's awareness of the European Union and the integration process has improved considerably. After informing the public that the EU and integration process exists, the communication strategy aimed to influence voters in the upcoming referendum

The Polish model

The process of accession to the European Union, which Poland became part of formally in 2004, forced the new EU Member States, in the previous as well as in the last enlargement processes, to reshape their image abroad while at the same time persuading their own societies of the desirability of the process and the correctness of its aims. The years 2000 - 2004, as the time of negotiations and Poland as one of the most important accession countries of the 2004 enlargement, are the field of observation to suggest that Public diplomacy became an important means of persuasion accompanying negotiation and ratification of the Accession Treaty. In 2000, the first complex Polish Public diplomacy campaign was launched in the countries of the EU. It consisted of two programs which covered the years 2000 - 2003 and were aimed in the first instance at opinion leaders and elites of the then EU Member States. The first step in the campaign was to identify the image of Poland as a country and Poles as a nation abroad with the aim of adjusting the strategy taking into account the needs and beliefs of the target countries. The surveys and content analysis of the press were carried out in selected countries of the EU - those most important for the process of negotiations, ratification of the Accession Treaty and for the future positioning of Poland in the EU. Thus, if the process of accession might be seen as a frame for a multilateral form of public diplomacy, in fact it was a bilateral form in the chosen countries. According to the results of the surveys Poland was an unknown country with predominantly a negative image, especially in the press. The results of the surveys showed also the need for a campaign for "branding" Poland. The main stress was then put on providing information on Poland to build a rational basis for the shaping of the image. Poland also trailed behind in the competition to be named the 'hero' of the anti-communist velvet revolution after 1989, when events in Prague and in Berlin rather than in Warsaw took center stage. The Polish campaigns still do not bring the message that in many fields the transformation brought about very positive developments for the country.

Czechoslovakia and the Czech Republic

It could be seen that Public diplomacy is something completely new for the Czech Republic, depending on contemporary changes of international environment. But using of expressions like promotion, propagation or publicity brings us to the very beginning of the existence of sovereign Czechoslovakia in 1918. There are documents in the archive of the Czech MFA about promotion strategy. The main purpose of such an activity was in the first years an attempt to defend the existence of independent Czechoslovakia in new Europe after the First World War. Great wave of promotion and, have to say advocacy, realized also in late thirties as a reaction on Nazi propaganda about poor situation of national minorities in Czechoslovakia.

The promotion of then Czechoslovakia was very similar to contemporary PD strategies. *Key message*: the existence of independent state arisen in agreement of post- war arrangement of international situation. *Key audience*: elites and also public opinion in major powers (Great Britain, France, USA) and also other European countries. And the *key instrument*: (tools of then promotion don't differ so much from ours) personal contacts, print, lectures, radio (as new communication technology). Main agents of such a promotion were embassies and diplomats. Key body was the Ministry of foreign affairs who coordinated all activities also of other ministries and private institutions. Really admirable was the system of reporting about PD activities and regular evaluation of this system, at least one time each year. The post-war Czechoslovakia and the Czechoslovak socialist republic are considered to create the second significant period of promotion or propaganda in our history. Every activity was in service of communist ideology. The key message was a promotion of socialism and Marxism-Leninism. Key audience differs and creates three different groups. The first one is a group of *socialist countries* (especially Europeans); the second one is created by *developing countries* with deep sympathy to socialism and the third one represent developed *capitalistic countries*. Instruments didn't change so much. Prestige position was held by culture and its exploitation in different variations, music (especially classical), art, cultural heritage etc.

The Republic of Macedonia

Macedonia is small country which is geographically positioned in areas of political tectonic quakes that small and weak states disappear, and large become larger. The concept of Public diplomacy segment is that survival and creating the preconditions for regional cohesion in a place and time where numerous historical, ethnic, linguistic, religious and territorial issues that are unresolved collide. One of the main concepts is international promotion of the Macedonian culture. International cooperation is one of the priorities of the Ministry of Culture. In May 2013 the Macedonian culture was presented in Sweden and Italy. The prominent folk ensemble "Tanec" gave a concert in Stockholm in honor of the 20th anniversary of the establishment of Macedonian-Swedish diplomatic ties. The same year Sweden hosted the exhibit of Macedonian medieval manuscripts. Also in 2013, in honor of the 1150 anniversary of the Sts. Cyril and Methodius mission in Moravia, the manifestation program included monodrama "Iustinian I". As an active member of the International Organization of the Francophonie, Macedonia took part in the 2013 Francophone Games, held 6 – 15 September in Nice, France. Another aspect that involves elements of Public diplomacy is the concept for attracting foreign direct investments, "Invest in Macedonia". Such activities are mainly conducted by promoting investment opportunities and international promotion of the Technological Industrial Development Zones (TIDZs – Free Economic Zones). Another important segment for the Public diplomacy approach of the Republic of Macedonia is the active tourism promotion. There are several ongoing projects that are developed by the Agency for Promotion and Support of Tourism. According to operating activities and program of the Agency for Promotion and Support of Tourism of the Republic of Macedonia, it is planned to deliver the project for development of tourism in the Republic of Macedonia - in particular in the segment "outdoor activities" as a significant part by the potential of the republic. The project includes the completion of existing and creation of new pedestrian, mountain trails throughout the territory of the Republic of Macedonia. In the recent years, Republic of Macedonia is promoting its tourism capacities and possibilities on global TV networks. The most recent TV advertisement "Macedonia Timeless" was broadcasted on CNN.

CONCLUSION

The city-states and later the states were built by Public diplomacy, and the lack of emissaries has led to downward spiral and demise of entire populations. This is the reason the people appoint, employ or elect such emissaries. Diplomats are the brightest and most educated individuals of the country they represent. They may sell or buy the entire yield of farm production or factory output. By actively comparing models of Public diplomacy, in several countries researched in this thesis, it can be concluded that one approach does not fit the need for all countries. This experience through active research and advice of my mentors has portrayed a completely irregular concepts and approach to Public diplomacy in an individual manner.

The United States has a comprehensive approach, where huge variety of agencies and governmental institutions are involved in Public diplomacy issues. They have one unique model, in targeting and forming world public opinion in their favor. The United States has long sought to influence the peoples of foreign countries through Public diplomacy efforts. They are performing this task very successfully. Public diplomacy provides a foreign policy complement to traditional government-to- government diplomacy, which is dominated by official interaction carried out between professional diplomats. Unlike public affairs, which focus, communications activities intended primarily to inform and influence domestic media and the American people, US Public diplomacy includes efforts to interact directly with the citizens, community and civic leaders, journalists, and other opinion leaders of another country. USAID is a great example of the US governmental institution that is doing a great job in shaping foreign opinions in the USA favor. Poland, on the other hand, used and still uses its Public diplomacy strategy towards shaping the opinion regarding the modern Polish person in the eyes of the Western countries. Their strategy is mainly focused towards the most influential countries of the European Union, Great Britain, France, and Germany. This is the case, generally because the perception about the ordinary Polish persons in these countries is very negative. Parallel with this process, the Polish government was persuading their own societies of the desirability of the accession process and the correctness of its aims. Similar with the Polish case are the strategies used by Hungary and the Czech Republic, having in mind that all of them were former communist countries. Having said this, the perception for all of them throughout western countries was similar, although the Czech Republic was seen more favorable than the others, because of their steady economic growth and fast opening of their market. Comparing the Macedonian model, with all the above mentioned, we can see that Macedonia does not have one comprehensive Public diplomacy strategy / model.

We can say that Macedonia has segments that are part of the Public diplomacy instruments like cultural promotion, promoting of investment opportunities and tourism promotion. By joining these segments, Macedonia can succeed in forming a Public diplomacy strategy, which will be internationally effective. In order to succeed in these endeavors, Macedonia must delegate many government activities to the civil society, NGOs and successful Macedonian worldwide. This is the only way to present its successful story globally. Every country that is going to find a way to use Public diplomacy effectively will definitely succeed in presenting its story to the world, particularly the best parts of it. For small countries like Macedonia, it is crucial to find a model that will be functional and effective, mostly because it is one of the few tools, if not the only one that is available.

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THE MEDIA AND THE WARS IN WESTERN BALKANS IN THE LAST DECADE OF THE XX CENTURY

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Abstract

In a war environment, in an atmosphere of increased national passion, the Western Balkans area obviously sidestepped the wave of wartime propaganda, media preparation and support and justification of the war. However, in Montenegro itself were manifested some characteristics, since on the territory of the republic, except for an occasional incident situation, there was no real armed conflict. The armed conflicts in southern Herzegovina, Bosnia, Dubrovnik, mobilized soldiers, induced psychosis in the public opinion of xenophobia and nationalism of all kinds was accompanied by an adequate and aggressive propaganda.

Key words: Western Balkans; hate speech; media; politics; war; chauvinism.

THE MEDIA AND THE POLITICAL PROPAGANDA

There are many definitions of the political propaganda term in dependence of the authors and attitude towards political persuasion. Organized political persuasion is called political propaganda. Practically there is no human activity which is not affected by propaganda and very different concepts are implied under this name. Because of this, it is not unusual that in the determination of the term propaganda, there appear as many definitions as there are authors who confirm that definition. This term is primarily burdened with ideological, but also with emotional attitude, which in the understanding of its essence have individuals, as well as social groups. Propaganda is primarily a value-neutral term, while a political activity that is not due to any propaganda has a certain target. For this occasion and topic, the following definition seems to be appropriate: "Political propaganda is a planned and organized activity on the creation, presentation, expansion of political content, attracting the people and securing their support for a particular political content and their stakeholders." (Slavujevic 2005, 12).

The propaganda is the creation and dissemination of ideas and attitudes in order to create readiness for a particular course of action. Propaganda represents every aspect of deliberate and organized activities which are carried out with the aim of influence on the views, opinions or feelings of the public, groups or individuals, with intention to obtain ideas, views and program of a social and political organization which conducts this activity. This term originates from the Latin *propagare* (spreading, reproduction, multiplication). Propaganda is therefore the kind of communication that is performed to convince message recipients. The ultimate goal of political propaganda is to directly or indirectly induce individuals to participate in political activities of a certain political party, in the manner and to the extent determined by the political subject alone. Propaganda primarily affects people's attitudes, emphasizing in this way: that attitudes are kind of predisposition for behavior or a latent structure which directs behavior in situations where the individual is confronted with the object attitude (Šiber 1998, 293). With the

propaganda influence, the most common effects are achievements in the field of strengthening positions, the effect of mobilization of the already formed attitudes, as well as crystallization and the formation of a new attitude. Political propaganda is therefore a deliberate and planned (organized) activity that has the task of overturning or, keeping certain political attitudes of individuals, social groups or society as a whole.

The goal of propaganda is to influence the way of thinking and behavior of people. Propaganda produces certain socio-psychological consequences and tends to penetrate to the deepest layers of the human psyche and to act on the segments which most frequently cannot be rationally controlled. In this sense, Bolshevik Rjzanov says: "they say that the English Parliament can do anything except change a man into a woman. Our Central Committee is far more powerful. He changed more than one man indifferent to the revolution into the old woman, whose number is increasing day by day." (Roberts 2002, 469). This paper is based on the analysis of printed and electronic media from the early 90-ies of XX century. In that time, in Montenegro existed only one daily state-run newspaper "Pobjeda".

THE COLLAPSE OF THE SOCIALIST SYSTEM AND THE ENTRANCE IN RAW PLURALISM

One of the causes of conflicts and wars in the former Yugoslavia lies in the fact that nationalists or in most cases communists who manipulated nationalism managed to impose the cult of the past, to lead the peoples to turn to national history, to revive old hostilities and continue the ancient wars. In many cases indeed, what is meant here are the efforts to find and revive ties from the past, to establish the continuity of certain ideas and projects, from today's perspective and modern goals. It may be noted that yesterday's communists, supporters of the idea of Yugoslavia, brotherhood and unity, recognized in the previously repressed nationalism new "power" and the field to win or maintain power. It is evident that for years, "Tito's time, " Tito's paths of freedom," the idea of brotherhood and unity, non-alignment and etc., constituted a kind of political bequeathing and a strong cohesive factor that is induced by daily propaganda in the Yugoslav public. With weakening of Tito's cult and his ideas, clearly was imposed a need for a new 'magnet for the masses ", now in the form of several political centers, which tried to form a critical homogenized mass that is strong enough to preserve or arrive to power by promoting ethno- nationalism. Statement by former high officials from Kosovo Fadil Hoxha (1986):

> There are individual cases of rape in Kosovo. I think that the private cafes in Kosovo should be allowed to bring, to recruit women from other parts of Yugoslavia. These individuals who rape women of other nationalities could mistreat to such places. Albanian women do not allow it, but Serb and others would, so why they do not allow it (...) had a negative effect and resonance in the former Yugoslav public. (Popov 2002, 210).

This statement launched an avalanche of protest gatherings in Kosovo, it was the subject of a large number of newspaper articles, and represented "to add fuel to the fire" to the already boiling and tense atmosphere of interethnic intolerance. After the first parliamentary elections in Montenegro, in 1990, there was a press conference by an opposition party. It was a conference of the National Party, which from the outset established itself as a national party whose priority was to fight for the Serbian's and Orthodoxy, and in the next decade will be a serious factor in the Montenegrin political pluralism. The National Party pointed out request "to declare Christmas as

a public holiday, and Savindan (St. Sava) and St. Vitus school holidays." (Andrijašević 1999, 3). A similar note was worn by forward-looking statements and comments on the visit of the delegation of the Order of the Knights of Malta to Montenegro. Receiving representatives of the Knights of Malta by the authorities in Montenegro N. Kilibarda rated very negatively. Kilibarda said that the organization of the Order of Malta is the right hand of Vatican and his predecessor: "Acceptance of the representatives of the Maltese knights coincides with the initiative to introduce Italian in the Montenegrin schools. Recalls that the Italian was not taught in Montenegro even in the time of King Nikola, who had friendly ties with Italy." (Kilibarda 1994, 2). These and similar ideas and statements were in the function of acquiring certain target groups and segmentation of messages according to ethnic and religious affiliation. Also, during the first years of the multiparty system, an opposition newspaper in Montenegro was accused of spreading anti-Semitism. In the article "Dance of the Vampires" published in the "Information Bulletin" of the Municipal Board of the Serbian National Renewal of Bijelo Polje, set out accusations against the Jews:

> The Jews are the cause and perpetrators of all the evils of this world - all the evil comes from them. These murderers, thieves, fraudsters, vagrants - Jewish spawn in Europe today is the biggest ally of the Mohammedan stinking pigs and Protestant sick dogs (which is reflected in the spread of religious hatred). This will not end their crimes. Today, they are next to Turkey and Iran, the main supplier of the Green Berets paramilitary groups in the former Bosnia and Herzegovina… For Jews there is not enough crude punishment, sacred Spanish Inquisition was too lenient for them. (Serbian National Renewal 1994, 2).

In an atmosphere of a decline of previous social values, when all options were open and everything is allowed, the newly-formed political entities had to learn the multiparty system and political dialogue. Vice-President of the Parliament of Montenegro S. Bozovic sharply reacted to the words of A. Visnjic, representatives of the Serbian Radical Party, warned him that in the Parliament he cannot offend and present severe and harsh words at the expense of colleagues. Visnjic was namely, replicating, said that R. Rotković (deputy Liberal Alliance) is not Montenegrin, but shores man and cannot defend Montenegro. He added also that "Rotković with its appearance more reminds to Muslim old man and is not suitable to tell lies". (Parliament of Montenegro, 13). In March 1991, members of the Serbian police station in Pakrac took the station and proclaimed it as Serbian station, but they withdrew in front of Croatian anti-terrorist police unit of about 200 members. Belgrade journalist M. Milosevic gives media fabrication of that event: "special reporters of RTV Montenegro reported that at least 40 people were killed in the town of Pakrac in Croatia. Unofficially, it is learned that there are 40 dead and dozens wounded. Fear of stray bullets. Serb population seeking refuge in refugee camps. JNA engaged." (Special reporters of RTV Montenegro 1991, 1). Radio Belgrade accepted the report, but noted the number of six dead. TV Novi Sad reported eight dead; a Belgrade TV recorded an Orthodox priest among the dead. Presidency of Yugoslavia finally appeared with official notice announcing that no one was killed in Pakrac. (Kurspahić 2003, 63). The statement of the Federal Secretariat of Internal Affairs of Yugoslavia said that until then there were no human casualties, but one seriously wounded, along with, two members of the Ministry of Internal Affairs slightly wounded. In October 1991, after a media preparation and incident on the Montenegrin-Croatian border, the Yugoslav People's army, according to official media, "passed from passive defense into offensive action." As then specified by "Pobjeda", "it started to beat Ustasha positions with

artillery". The old rule says that in a war, the first to starve is the truth. Thus, immediately after the beginning of the occupation of Dubrovnik, its mayor P. Poljanić told on 12 October 1991 in front of TV cameras that around 15.000 shells hit the city. That news went around and alarmed the world. The shelling of Dubrovnik attracted much of the world public, especially since the city was under protection. It turns out that Adolph Hitler would have been under the protection of UNESCO if he had hidden in Dubrovnik". (Matija Beckovic 1991, 1). The only daily newspaper in the republic and state gazette, the "Pobjeda", encouraged patriotism in a negative context and in animosity wrote about those who did not support the war for Dubrovnik. In December 1991, "Pobjeda" quoted a statement by Zeljko Raznatovic Arkan, who enthusiastically talked about the heroic feats of Montenegrins on the Dubrovnik front, incidentally threatening internal traitors in Montenegro:

> Give my regards to the heroic brothers Montenegrins, saying that Dubrovnik has to be ours or godly! In the summer I am coming to Dubrovnik to hear the fiddle, and and afterwards, me and my army are going to take back Skadar! And say to those Ustasha Jevrem Brkovic and Slavko Perovic that I will, when I finish the outside enemy, I will finish their father and mother - said Arkan.

The members of other religions and nationalities have contributed to the exacerbation of the complex political situation, primarily induced with Serbo-Croatian tensions and conflicts. They held cultural and religious events in Montenegro to spread hate speech and thereby contributed to the deepening of the atmosphere of mistrust, extremely suitable for various forms of manipulation and propaganda:

> Clumsy Prince Lazar in 1389 ran with his counterparts in front of a powerful empire, which had smashed him. Then, from that was created fake epic upon which generations have built their inferior culture. And now they are complaining how is supposedly good to the entire Yugoslav people, except to them. How will be good to them when they have chosen heavenly kingdom between earthly and heavenly kingdom. (Rasim Muminović, 9).

No single political leadership of Montenegro was immune to the events at the Dubrovnik battlefield. In this context, Milo Djukanovic said: "I have already hated chess because of them and their submissiveness to the chessboard (Croatian flag has chessboard in the middle) and the young democracy "such as type of 'Kalashnikov'". Twelve years later (in 2003), Milo Djukanovic called his statement: "absolutely benign" compared to the statements that have come from Zagreb and clarified the pretensions towards the Bay of Kotor (Pavlovic 2004).

THE HOT ENVIRONMENT – THE OVERFLOW OF MEDIA HATE SPEECH

Regarding the war on the borders of Montenegro and its neighboring area, and the fact that it represented small political and economic system for the former Yugoslav conditions which is impossible to observe isolated outside the context of economic, and political circumstances in the wider area of Yugoslavia, it is necessary to underline the propaganda activity in an environment that was overflowing and the territory of Montenegro. Political propaganda in the war differed from those of pre-war. The media highlighted the stories of victims and culprits at that time, of "them" and "us", and the images were becoming bloodier and crueler. The language itself and the images become more emotional in order to wake up the

reaction. In these tragic events of the civil war, the media of all involved parties raced in hate speech and rising tensions. Propagandists implement stereotypes, manipulate emotions, and through myths connect the events from the past and the present, in order to convince people that created stories are part of their history.

The best example remains the Battle of Kosovo, manner in which Slobodan Milosevic and the emperor Lazar and his fight for the Serbs are combined into one symbol. Another myth that marked the 90s is one of the "millennial dream of Croatia", which once again all those who received the message were recalled to the past as well, the struggle for independence and vulnerability of one side to the other side. Comments were broadcasted with plenty of outrage, and the ruling circles of one or the other side proclaimed even entire nations, without excepts as chetniks, ustasha or jihadists, genocidal etc. There were various other extremist publications, such as "Dragon of Bosnia" in Tuzla and the weekly newspaper "Bosnjak" which called for revenge against the Serbs and to a lesser measure against Croats. "Every Muslim should have a Serb to kill him" - wrote Zilhad Ključanin. Zenica Board of the Islamic Religious Community printed own instructions to Islamic fighters, which was signed by Halil Mehic and Hasan Makić, concluding that the military command has to decide what is more useful and of greater interest to do with enemy prisoners: to release them, exchange them or liquidate them. Mentioned Ključanin in the introduction of "Ljiljan", published on 23 February 1994, wrote: "a Serb is approaching to mankind only when he is dead". (Kurspahic 2003, 109). And here the opinion of Biljana Plavsic about the members of other religions: "Muslims are genetically rotten material transferred to Islam. And now, of course, from generation to generation, this gene simply condenses. It's getting worse and worse, expressing simplicity, dictates a way of thinking and behavior. It is already imbedded in the genes." (Biljana Plavsic 1993, 1).

Hate speech used the names and false pretext of naming an opponent or giving names which members of other nations consider abusive or ineligible (such as "Shiptars" for the Albanians, "Bali", "mujahedin", "Turk converts" or "Turks" for Bosnian Muslims, "Viennese horseman" for Slovenes, "Serbo-Chetniks", "Chetniks", "Byzantines" for the Serbs etc.) Broadcasted comments were full of outrage, and the ruling circles of one or another side proclaimed even entire nations, without gaps, as chetniks, ustasha or jihadists, genocidal, and similar. In the primetime news program TV news broadcasted in 1992 on Bosnian Serb television, the editor compared former Muslim territory and read the fate of the population of that entity by coffee tasseography. It is unethical behavior of editors who began Daily News with the film where they washed the feet in a basin, alluding to the backwardness of the Muslim nation, which further deepened the antagonism and hatred toward members of this nation. (Zuber 2005, 35). And in the political discourse in Slovenia and Croatia, the effort to justify the political and military actions that were undertaken there was noticeable, as well as the effort to legitimize them as. Supposedly, it is in the interest of Europe to withdraw and establish a new border in the former Yugoslavia between "western and eastern part, between modest and working west-Catholic tradition and violet, Oriental-Byzantine heritage", as Slovenian Minister of Science Peter Tancig quoted. Prejudices such as: "Croats are cunning Latin's, the Serbs are cunning Byzantines, Albanians are aggressive, brash, brutal and insidious, are some of the widely used in everyday discourse." (Trebjesanin 1995, 94).

In the western media, Milosevic was characterized as butcher of the Balkans, the Balkan Hitler, European Saddam Hussein. During the Croatian-Muslim conflict in Bosnia, Tudjman was described as an apprentice of the Balkans butcher, overt racists and anti-Semitist, despicable villain. Tudjman wrote the following in his book, among other things: "Genocide is a natural

phenomenon (…) God not only allows genocide..," what looked like a continuation to the policy of the Independent Independent State of Croatia (NDH) in the Second World War. (Gruden 2004, 27). Broadcast of the secret TV footage about import of weapons from Hungary and shot of Martin Spegelj, Croatian Minister of Defense, shocked the Yugoslav public and then in response clearly shows how chauvinism feeds the other in an atmosphere of growing nationalism and evoking memories from previous wars. Martin Spegelj, in a secret recording, among other things said: "We will solve Knin in a manner that we will massacre everyone. We have the international recognition and therefore we will massacre them ... It will not be a war, but it will be a civil war where there would not be mercy to anyone, not even to wife or the children. In the apartment just bombs (...)" (Popov 2002, 225). During a break within a session of the Presidency of the Yugoslav Alliance of Communist (SKJ), state "Daily news" played footage about the illegal import of weapons and arming the police in Croatia. That needed to works propagandistic on the present members of the Presidency.

CONCLUSION

So, in such a war environment, in an atmosphere of growing national passion, the area of Western Balkans, including Montenegro, did not passed over the wave of war propaganda, media preparation and support and justification for the war. However, the requisite specificity was demonstrated in Montenegro, because on the territory of the republic, except for occasional incidental situations, there was no real armed conflict. Specificity is also a certain percentage of proponents of the Montenegrin independence who gave a special tone to the atmosphere caused by the surrounding wars, with their ideas and appearances in the media and political life. Armed conflicts in southern Herzegovina, Dubrovnik, Bania area where where soldiers were deployed, induced in public psychosis of xenophobia and nationalisms of all kinds, and this been accompanied by an adequate propaganda of aggressive war propaganda. The new governments formed after the collapse of the former Yugoslavia actually used the media as a weapon that can contribute to achieving their short-term and long-term political goals. The interpretation of events, their linking with immediate and distant past, creating a unique mythic image of the eternal sacrifice of own people, the genocidal character and fickleness and depravity of other people - it was a task that is equally valuable carried out not only by many journalists, but also by many intellectuals. To do so, each government in the republics tried to dominate the media in their territory, especially television, turning them into instruments of the regime's propaganda with the task to "obtain" population for its political ideas and actions. So, in such a war environment, in an atmosphere of growing national passion, this area did not skip the wave of war propaganda, media preparation and support and justification for the war. From a number of reports, studies, articles and testimonies follows that the common trait of national political programs in the former Yugoslavia presented from the late eighties to the first years of the third millennium, follows that the trait was supported and allowed by the media, which became the most loyal servants of the nationalist parties in power in the republics.

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WHY TURKEY SHOULD JOIN THE EUROPEAN UNION: ARGUMENTS IN FAVOR OF TURKISH MEMBERSHIP

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Abstract

One of the main objectives of the Turkish foreign policy is to integrate Turkey in the European Union. Over the last decades Turkey has unsuccessfully tried to join European Union. For various reasons (economic, political and social), European leaders have blocked the attempts of Turkey to join European Union. There is a widespread belief in Europe that Turkish membership poses a threat to the stability and security of the European Union. This article explains why Europe needs Turkey and why Turkey's integration into Euro-Atlantic structures should not be seen as a danger but as an opportunity for economic progress and development of Europe.

Key words: EU; Turkey; Integration; European enlargement process; democratization.

INTRODUCTION

Turkey has striven to become the full member of the European Union (EU) since 1963 since they signed the association agreement known as Ankara Agreement. Since then, numerous efforts have been made by the Turkish government to integrate Turkey into European Economic Community. Prime minister of Turkey Turgut Özal formally applied for full membership in 1987. The Turkish government was disappointed when most of the EC community members rejected full membership of Turkey. Many reasons have been provided by the EU members for delaying the integration of Turkey into European Union. Among the political reasons, one has to mention concerns over Cyprus issue and the Turkish justice system as well as country's human rights record. Although Turkey has to carry out a wide range of reforms in order to become a genuine liberal democracy, it still remains an illustrative case of ongoing democratization from which neighboring countries can draw important lessons. Turkey has made significant efforts over the last years to carry out democratic reforms with a view to fulfill the EU's Copenhagen Criteria. Turkish government demonstrated firm willingness to continue with reform efforts and accelerate the democratization process of the country. (European Commission MEMO 2013, 1). Turkey's democratic transition is still an ongoing process and before being integrated into European Union, Turkey has to carry out above mentioned reforms. Turkey is gradually getting closer to Europe. But, it has to be mentioned that there has been a reduction in pro-European enthusiasm in Turkey. Sociological research has revealed that the number of eurosceptics is

growing in Turkish society. The European Union has lost its attractiveness and many Turks hold the view that Turkey's accession to the EU is no longer needed. (Morelli 2010, 2). A national survey which was conducted in 2006 revealed that 2/3 of Turks had lost faith in the European Union and had no expectations of gaining membership in the Union. The vast majority of Turkish citizens no longer support the country's accession to the EU. (Akçay and Yilmaz 2012, 18). Turkey may lose motivation to implement democratic reforms because of the growing European reluctance to integrate the country into the European Union. The idea that Turkey should join EU is not a very popular issue in some European countries. (Straus 2013, 1-4). There is a widespread prejudice in Europe that Turkish membership can bring alone a wide range of problems. Many European politicians think that Turkish membership in the EU will cause the emergence of economic and social problems and will place a heavy burden on the EU budget. Especially right-wing political circles are against Turkey's integration in the European Union. Christian democratic and conservative parties in Germany, France and Austria often criticize the EU enlargement process and hold the view that the candidate states should not be admitted in the Union. (Rios 2012, 5). Turkey's EU accession process began in 2005 but the process is going very slowly. France, Germany, Austria and other European countries influential politicians oppose Turkish membership in the European Union. As former European Commissioner Frits Bolkestein said: "Turkey is too big, too poor, and too different." (Lamb 2004). The aim of this paper is to refute these arguments and to prove that the European Union needs Turkey.

Myth 1: Turkey is too poor and will cost the EU too much

There is a widespread view in Europe that Turkey is economically weak and could be a heavy burden for the European Union. But one has to take into account that with a Gross Domestic Product (GDP) of $786 billion, "Turkey has become the 18th most powerful economy in the world." (The World Bank 2014). Therefore, it can no longer be perceived as the "sick man of Europe". Unlike South European countries which face financial crisis, Turkey experiences rapid economic growth over the last decades. While many European countries have been unable to recover from the financial problems, the Turkish economy grew by 9.2 % in 2010, and 8.5 % in 2011, thus distinguishing itself as the fastest growing economy in the world. (OSEC 2012, 1-3). Turkey managed to overcome financial crisis much better than most of the countries of the European Union. *Per capita* income has increased considerably over the last years and the living conditions of the average Turk is now much better than the socio-economic conditions of his Romanian and Bulgarian counterparts in the EU. Despite the huge success in economy, the number of skeptics who oppose Turkish membership in the European Union has not been reduced. On the contrary, the skepticism is growing. Those who are opposed to Turkish membership in the European Union say that the entry of Turkey will place unbearable strains on the EU finances and will exacerbate financial crisis in Europe. There are political elites in some European countries that are against the EU enlargement process because they believe that enlargement will bring additional socio-economic problems to Europe. These political elites don't like the idea that new members will join the European Union. Skepticism on enlargement was strengthened especially after the 2008 Global Financial Crisis. European political elites that oppose the European enlargement process started to blame new member states for causing economic crisis and financial problems in Europe. Right-wing political circles perceive eastern European member states as a heavy financial, social and economic burden.

These political groups can be found everywhere in the EU. There is a widespread view that costs of enlargement exceed the benefits that Western European countries can get from it. (Gasanova 2014). The European Union enlargement should not be seen as a danger but as an opportunity. Skeptics should take into account the fact that Turkey is no longer a backward or impoverished land. Turkey's integration into the European Union will increase the size of the European internal market and will make Europe more competitive on the global arena. One has to take into account that Turkey is Europe's sixth largest trading partner. Turkey will constitute a true asset for the Union with its dynamic economy, its special geostrategic position and geopolitical significance. The European Union needs Turkey in order to create a New Silk Road and establish closer economic, trade and cultural relations with Asian countries.

The European countries are especially worried about the high level of energy dependency on Russia. The Ukrainian crisis has demonstrated that Russia is not a reliable partner and the dependence on Russian gas or oil is quiet dangerous. Russia uses oil and gas as a political weapon and therefore, Europe is interested in diversifying the supply of oil and gas reserves. The European Union certainly requires new transport routes for energy, and Turkey which is a bridge between Europe and Asia can become an alternative energy corridor. Turkey already plays a very important role as a transit country. Turkey has become a necessary bridge connecting Europe to oil and gas reserves of Middle East, Caucasus and Central Asia. Turkey matters because of its importance as an energy hub and as a transit country for energy goods. Energy security is an issue of high priority for Europe. Turkey, because of its strategic location, has become "an important energy partner for Europe and its energy strategy is consistent with the European Union's energy security policy." (Arvanitopoulos 2009, 44).

Myth 2: Turkey is too big and if admitted in the EU, Europe will be overwhelmed with Turkish migrants

The European leaders are concerned that Turkey's large population could change the balance of power in the European Union. Although Germany, with 82 million inhabitants, is the largest country in the EU, its population is aging and declining. If Turkey gets admitted into European Union it "would be the second largest country (and perhaps eventually the largest with its much higher growth rate) in the EU and would considerably alter the balance of power in the European Union." (Rosenberg 2014). There is a widespread fear in Europe that if Turkey gets admission to the European Union, millions of Turks will migrate to Europe. According to this view, immigrants from Turkey will take jobs away from native workers and substantially increase the unemployment rate. (Wendicke 2008). But the public opinion research has revealed that there is little basis for this fear. According to the sociological research conducted by Gallup World Poll, very few Turkish citizens have a desire to migrate to other European countries. Massive migration of Turks to Europe is less likely to take place, and the fear of "Turkish invasion of Europe" is groundless. Only 13 per cent of Turkey's adult population expressed a desire to migrate to Europe. Turkey's record of "economic progress and relative political stability in the last decade are key reasons for this shift." (Sirkeci 2013). The desire to migrate to European Union has decreased considerably because of the financial crisis in Europe and Turkey's steady economic growth. Turkey experiences rapid economic growth, and therefore, Europe lost its attractiveness.

The more the Turkish economy grows and employment opportunities are created, the less likely Turks are to migrate in large numbers to the European countries. Turkey is more likely to follow a Spanish pattern:

> When negotiations for the accession of Spain to the European Economic Community were launched, France in particular feared that it would be invaded by Spanish workers looking for employment but in reality this never happened. In 1960s and 1970s, Spanish economy started to grow and many Spaniards who had migrated in large numbers to Germany and France began returning to Spain. Since the beginning of 1990s, Spain has become a net importer of people, not a net exporter. Large number of African and Latin American people migrated to Spain since 1990s. As of 2010, there were over 6 million immigrants in Spain, 14% of the total population. (Scoppettone 2014).

It is quiet likely Turkey will follow a Spanish pattern – as Turkey becomes richer, more and more Turkish workers will return to their homeland. Just like Spain, rich and prosperous Turkey could become "a magnet for migrants from the Arab countries." (Timmerman and Mels 2008, 80). The Europeans tend to view Turkish membership through the distorted prism of its citizens migrating to the EU. Immigration from Turkey should not be seen as a danger but as an opportunity for economic progress and development of Europe. Turkey is a stable, free-market economy, which has young and vigorous workforce. While most of the European countries are facing demographic problems and the European population is aging, Turkey is experiencing rapid population growth. In contrast to Turkey, European countries are experiencing acute demographic crisis. In 2003, the natural population growth in the European Union was just 0.04% *per annum*. Nearly all European countries are experiencing continuous population decline and, consequently, a rapid reduction of the workforce. The total working age population (15-64 years) is expected to fall by 20.8 million between 2005 and 2030. (Valverde 2007, 248). The fertility rate in Europe is extremely low. It is below the threshold needed to renew the population. Because of the low birth rates European countries will face serious socio-economic problems in the future: "aging could cause potential annual growth in GNP in Europe to fall from 2-2.25% to 1,25% in 2040." (Valverde 2007, 248). In 2020, approximately 20% of the population of the European Union will be 65 or older compared to less than 7% in Turkey. (Rotaeche and Reyero 2008, 188). An aging society and the shrinking of the workforce is putting strain on the state pension systems of European countries. The generational compact is likely to break sometime in the future as European youth is forced to pay higher taxes in order to support a larger aged population. The biggest challenge that European countries are facing nowadays is how to restore social contract between the generations. One possible solution to this problem is to allow migrants from other countries to settle in the homeland of the native European peoples.

We can take as an example Germany which has accepted large number of immigrants from Turkey in order to solve the problem of acute labor shortage. After 1961, the government of West Germany accepted many Turkish citizens (largely from rural areas) as *gastarbeiters*. (Sonmez and McDonald 2008, 2). Initially, the German government hoped that immigration would be temporary and after some years, gastarbeiters would return to their homeland. But nowadays, because of the demographic crisis, immigration is seen as an opportunity for Germany. The procedures for acquiring German citizenship "have been considerably simplified over the last years, and the governments of the German States have begun campaigns to persuade immigrants to acquire German citizenship." (RP Online 2015).

As the European population grows older because of lower birth rates and longer life spans, the European Union will have to accept more immigrants from neighboring countries and regions in the future. Turkey's young and vigorous workforce could be useful and could help many European countries to overcome the demographic problems and the labor shortage. Thus, the problems of an ageing population and shortage of manpower could be mitigated by accepting immigrants from other countries. (Valverde 2007, 251). Turkey could significantly strengthen the military power of Europe. Turkey has the second-largest army in Europe. Turkey's young population can play a major role in strengthening the European security.

Myth 3: Turkey is too different

The knowledge about Turkey is rather limited and misperceptions, negative stereotypes are widespread in some European countries. Sociological research has revealed that just over 30% of European citizens are in favor of Turkey's integration into the European Union. Opponents to Turkish membership think that there is a culture gap between the European Union and Turkey. There is a never-ending debate in Europe about Turkey's *europeanness*. Many people doubt that Turkey is really a European country and argue that Turkey should not be admitted in the European Union because "they lack a Christian identity." (Cameron 2004). Some people think that Europe is a club of Christian nations; therefore, an Islamic country should not be accepted as a member of the European Union. According to the official statistics, about 99% of Turkish population is Muslim, "the majority of whom are Sunni." (US Department of State 2004). Turkey's predominantly Muslim nature is one of the reasons for popular opposition to Turkey's integration into the European Union. Due to large number of conflict in the Middle East, Europeans think that the accession of Turkey to the EU will cause the emergence of religious extremism and fundamentalism. (Clesse 2004). However, Europeans should take into account that unlike some Middle Eastern countries, Turkey is not run by strict religious laws, and the Turkish government opposes Islamic fundamentalism. Turkey is a tolerant country, and non-Muslim communities feel safe and protected by Turkish constitution. Turkey has chosen a pro-Western path and has a western style political and economic system based on limited government and separation of powers.

The constitution of Turkey provides for freedom of religion and the Turkish government respects the rights of non-Muslim people and national minorities. Like most of the European countries, Turkey is a democratic republic, and freedom rights and advancements may surprise many Europeans who hold the view that Turkey is too different. Turkey is a modern, western-style secular nation-state which displays the trappings of a western-style democratic government. It is a successful example of combining Islamic institutions with secular and democratic institutions. Turkey is a good example to prove that Islam is not an obstacle to democratic development. However, things could change if Turkey will be left outside the gates of the European Union. It could have negative consequences and could hinder the democratization process in the country. It is in the interests of the European Union to transform Turkey into a stable, prosperous and democratic country and accept it as its full member. The membership of Turkey in the EU will accelerate the economic, political and social reforms in this country. The passage to membership will provide a stimulus to complete these democratic reforms. Without full membership in the EU, Turkey could be tempted to turn east and maintain close relations with non-democratic and totalitarian countries. In this case, European countries may lose a strategic ally and partner in Asia Minor. If Turkey succeeds in meeting the Copenhagen Criteria

and adapting to European standards during the next decades, then they should definitely become a full member of the European Union. According to Dr. Cengiz and Dr. Hoffman, the European Union is not a club of Christian nations, but rather a union of like-minded countries that try to achieve common economic and political objectives. (House of Commons 2012, 101). The old prejudices against Turkey, mainly based on religion and identity, are still very present and widespread in the European countries. The reinvigoration of accession talks and building closer links with Turkey could help Europeans to develop tolerant attitudes towards people of different religions and modify a very skeptical public opinion on Muslims. The refusal to accept Turkey in the EU on religious and cultural grounds could be disastrous for Europe. The "Clash of civilizations" could be avoided and tensions between the West and Islamic World could be diminished by admitting Turkey in the European Union (Timmerman and Mels 2008). Integration of Turkey in the European Union will provide the incentive for other Muslim nations to carry out democratic reforms. In this case Turkey could become a model of democratization for all Muslim countries in the Middle East. It could constitute a model for the Muslim World and it could play a decisive role in spreading freedom, democracy and prosperity in its neighborhood. (Akçapar 2006).

CONCLUSION

The European Union has the capacity to absorb Turkey. Turkey's integration into European Union should not be seen as a dangerous process. On the contrary, Europeans should be aware of positive aspects of integration of Turkey in the EU. In the long run, the admission of Turkey could have a positive impact on European Union. The Europe could reap benefits from Turkish membership:

1. Turkish membership could increase the economic potential of the European Union and could make Europe more competitive on the global arena. Turkey is no longer "a sick man of Europe", and it experiences rapid economic growth over the last years. Furthermore, immigration from Turkey could help to mitigate the effects of the falling population. Economic growth is impossible to achieve during times of demographic crisis and labor shortage. Never in history has there been economic growth without population growth. Turkey with its large population and large human resources could alleviate demographic problems in Europe.

2. Turkey is a bridge between Europe and Asia. The European Union needs Turkey in order to intensify economic, cultural and trade relations with the Middle East, Caucasus, Central Asian Countries and China. Turkey can play a vital role in reviving the Silk Road and could contribute greatly to economic, cultural and social development of Europe. Over the last years, Turkey has become an energy hub, and after the construction of oil and gas pipelines its strategic significance has increased considerably. Turkey plays very important role in the transportation of hydrocarbons, especially natural gas and oil, to Europe. The EU needs Turkey to reduce its dependence on aggressive and unpredictable Russia. Ukrainian crisis proved that Russia is an unreliable partner and the European Union has to develop a Southern Gas Corridor in order to reduce its dependence on Russia. The new energy export infrastructure could be built through Anatolia, and Turkey could play a significant role as an energy transit state.

3. Turkey could become a successful example of democratization for other Muslim states. Turkey could prove that Islamic values are compatible with liberal-democratic values. Nowadays, Turkey is the only Muslim democracy. (Lewis 1994). But the number of Muslim democracies could increase considerably if Turkey becomes the member of the European Union and joins the club of liberal democratic countries.

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THE INTERNATIONAL PUBLIC LAW AND THE USE OF FORCE BY THE STATES

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Abstract

The paper in front of you presents an attempt to give an answer to the hypothesis – is the use of force in accordance with the public international law and several issues arising from it – if the use of force is allowed then when it receives international legality and legitimacy? If it's legally prohibited, whether such prohibition is general rule without any derogations or there is an exception to that rule? The research was done using the method of contextual analysis of international documents (UN Charter, relevant UN Security Council and the UN General Assembly resolutions, and court cases from the practice of International Court of Justice). Some of the main conclusions are: UN member states are obligated to refrain from threat or use of force against territorial integrity and political independence of another state. The exclusive right of using force is situated only in the Security Council.

Key words: International public law; use of force; United Nations; Security Council; NATO; Kosovo.

INTRODUCTION

Not so many topics of international law cause a greater interest as the use of force. The roots of this discipline (*Ius ad Bellum)* lie on trying to find an answer to the question of when force can legitimately be used in the international arena. In the period before 1945 any use of force, regardless of its duration and purpose, was considered as war. The reason for that was the nonexistence of international legal framework governing the use of force in the mutual relations of states. First attempts for its regulation date back to so-called doctrine of just war that has been developed under the influence of the scripts of Ss. Augustine and Ss. Thomas Aquinas. In sequence this doctrine of just war to be equitable, the use of force had to be approved by a sovereign, to have equitable cause (force is directed against that party which did something wrong). People that were in war or city that was involved in war should have equitable intention, preference of good and evil avoidance.

In the beginning of the XIX century certain attempts have been made by states in order to provide some justification for the use of force. During this period, the most common argument of justification was use of force in the name of humanitarian intervention**.** The history of nations knows few examples of such use of force which was established as practice of states. As most suitable examples could be listed: the intervention of France in Syria (1840) in order the repression against the population which was undertaken by the Ottomans to be stop; the intervention done by Austria, France, Italy, Prussia, and Russia in order the Christian population of Crete to be protect in the period between 1866 to 1868; interference of the European powers to support the Macedonian revolutionary movement (1903-1908), etc. States have been using new argument since 1921 to justify the use of force titling the same as use of force for protecting own citizens and goods on foreign territory. The force has been used against states which abused

its sovereignty and cruelly treated population regardless of whether they are foreigners or its nationals. The third argument for justification of the use of force was using force due to overthrow or retaining certain regime. These three arguments represent the basic of customary law of self-defense. In the beginning of XX century the two Hague Conventions were adopted, therefore the law of war (*Ius ad Bellum*) became subject of interest and regulation. Provisions of these conventions for peaceful settlement of disputes (adopted in 1899 and 1907) oblige the parties to maintain their good behavior and to accept mediation in order to resolve the disputes before using force. After the period of World War I, the mode of using force was also tightened.

As result of it the Covenant of the League of Nations was formed. The same declared that mutual disagreements and disputes between member states must be exposed to arbitration or to the Council of the League before using force which means the war was still considered as illegal. The force that Japan used against Manchuria in 1931 had been justified by the principle - protection of own citizens in Manchuria, but the League of Nations took a different point of view and stressed that the military operations undertaken by Japan were not undertaken in self-defense. The limitation of use of force is reflected throughout the League's attitude towards the intervention undertaken by Italy against Ethiopia in 1935. Italy's argument that force was used in order to protect itself against future attacks planned by Ethiopia was not accepted by the League of Nations. The League's attitude was that Italy was not allowed to decide on its own regarding the use of force in self-defense.

In this period before the entry into force of the UN Charter there are opposing views about the use of force by states. One group of states considered that the use of force on behalf of the right of self-defense is *ius naturale*, absolute right and it should not be limited. Another group of states represented the view that unlimited measures for using force in self-protection should not be undertaken. However, from 1945 onwards, there is continuous effort to limit the unilateral use of force by states.

International law and the use of force in accordance with the UN Charter

The UN Charter which serves as a guide for solving problems related to international peace and security made some progressive development of rules and principles in international law previously established by international conventions, treaties and covenants. The central norm for the use of force contained in Article 2, paragraph 4 is subject to substantive disagreements. It is stated that "all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". Hence not only the use of force is prohibited but also the threat of using force is prohibited too.

The states agree that this prohibition is not only a contractual commitment but also *ius cogens*. There is no general agreement regarding the exact scope of this prohibition. Disagreement concerns whether the last part of Article 2 (4) should be read as a strict prohibition on any kind of use of force against another state, or the use of force is allowed when it's objective is not displacing the government or occupying the state territory, as well whether this type of action is consistent with the objectives of the UN. This controversy has reached its culmination during the use of force by NATO in Kosovo in 1999. States and scholars expressed substantial disagreements about the legitimacy of the intervention in terms of Article 2 (4). Some of them claimed that a new right of humanitarian intervention has emerged, while others state that NATO's air military campaign was flagrant violation of the UN Charter. The Security

Council (further in the text as SC) is not always able to act efficiently because of the veto power of five permanent member states (USA, Great Britain, France, Russian Federation, and People's Republic of China). Hence according to me, Article 2 (4) should be broadly interpreted in a way which allows use of force in order to the maintenance of international peace and public order and the principles and purposes of the UN. Very narrow interpretation of Article 2 (4) was manifested by Israel in Uganda in 1976 at the Entebbe airport in order to rescue Israeli hostages in Air France plane kidnapped by a terrorist organization. The official position of the Israeli Government was that "the force used on foreign territory was performed on behalf of the right of self-defense in order to protect its own citizens." (Grej 2009, 32-33). This argument was not supported in the SC debate except by the US. The US ambassador noted that the violation of Uganda's sovereignty was only temporary. Israeli argument was rejected by Sweden, Japan, and the Soviet Union. All of them, in the most vigorous manner, condemned the Israeli aggression against the sovereignty and territorial integrity of Uganda.

A convincing majority of states that took part in the debate evaluated the action of Israel as a violation of Article 2 (4). Those who did not condemn Israel did not defend the legality of the action in terms of a narrow interpretation of Article 2, too. The first derogation from Article 2 (4) is Article 42 (Chapter VII), also known as remedy, because the exclusive right of using force is situated only in the SC. It is stated that "the Security Council may take action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the UN." This was made in order to exist sovereign who will use force to impose peace and security in that part of the world where peace, stability and security are violated.

The second derogation from Charter is Article 51 (Chapter VII). It is stated that:

> (…) nothing in the Charter impairs the inherent right of individual and collective self-defense in case of committed armed attack against any member state of the UN until the SC has taken necessary measures for restoring international peace and security (…) Measures taken by Members in the exercise of the right of self-defense shall be immediately reported to the SC and should not affect in any way the authority and responsibility of the SC in maintaining international peace and security.

Analyzing the Article 51, easily could be recognized the intention of those who created it, emphasizing the collective security system which gets activated in the moment when state submitted a report to the SC that used force in self-defense. From that moment on, the Council is authorized to take all necessary measures against the aggressor. On the other hand, only the provided report by the state to the Council that acts on behalf of the right of self-defense does not necessarily mean that the use of force is legally permissible. (Hadzi-Janev 2009, 20-21). It means that SC is obligated to carry out investigative measures and to make decision about the legal permissibility of the force used in self-defense.

Although SC has 'moral' obligation to carry out investigative measures and to make decision about the legal permissibility of the force used in self-defense, Article 51 does not require from the Council to present its opinion on the legality of every reference to self-defense. The Council does not come out with statements as this very often, in practice. Only a small number of SC resolutions explicitly refer to Article 51. They usually confirm, in the most general sense, the right of state to take action in self-defense.

For example, the SC Resolution 1234 (1999) concerning the conflict in the Democratic Republic of Congo (further in the text as DRC), in general sense, confirmed the right of individual and collective self-defense according to Article 51. It is stated that:

> (…) the Security Council, expressing its concern at all violations of human rights and international humanitarian law in the territory of the DRC, is recalling the inherent right of individual and collective self-defense in accordance with Article 51 of the UN Charter; (…) reaffirms the obligation of all States to respect the territorial integrity, political independence, and national sovereignty of the DRC; (…) demands an immediate halt to the hostilities [and] (…) condemns all massacres carried out on the territory of the DRC and calls for international investigation into all such events. (S/RES/1234 (1999).

As stated above, Articles 42 and 51 grant central role to the SC, in terms of using force in international relations. Article 24 also reaffirms the primary responsibility of the Council for the maintenance of international peace and security. It is stated that: "(…) in order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the SC acts on their behalf." (Article 24, para. 1, the UN Charter).

The use of force in self-defense

The right of self-defense causes profound disagreements among states and authors. Number of dilemmas over the scope of the right of self-defense occurs; in particular the issues of (il)legality of preemptive self-defense[2] and protection of own citizens are debated since the creation of UN. The United States are one of the countries that accept this doctrine of preemptive self-defense. Bush's administration made it clear that the force will be used against any potential threat from 'renegade states' before they are able to threaten with using weapons of mass destruction or actual use of weapons of mass destruction. This attitude of Bush's administration was applied in practice, although it goes beyond any acceptable understanding of preemptive self-defense in the international law. On the other hand, except in their own case, the US aren't willing to accept the same practice in relation to other states, such as in the case of Russia's intervention in Georgia in 2002. Namely, after the hostage crisis that Chechen terrorists created, Russia used force in Georgia's territory with justification that acted on behalf of the right of preemptive self-defense, something that the US protested.

Israel also broadly supports and practices the policy of preemptive use of force in self-defense. Australia not only declaratively but also practically supports the policy of preemptive self-defense to deal with new security threats, by participating in the mission "*Freedom for Iraq*". Records on the position of the European Union about preemptive use of force in self-defense can be found in the Treaty of Lisbon (further in the text only as: the Treaty) and other relevant documents. The Treaty clearly defines EU's role in the common foreign and security policy. EU missions undertaken outside of Union's territory are aimed at peace keeping, conflict

[2]Situation when a state, which consider itself as a potential victim, used force against another state (potential enemy) under pretext that prevents any future attack without possessing reasonable evidence. So the use of force is based on assumptions of the potential victim. Under Article 51 of the UN Charter, outlined above in the paper, preemptive self-defense is prohibited because the right of (individual and collective) self-defense is activated only in case of committed armed attack.

prevention, and strengthening the international security in the context of the UN Charter. According to Article 21, paragraph 1 of the Treaty:

> (…) the action of the Union on the international scene is guided by principles which inspired its creation, development and expansion, principles which the Union aims to promote worldwide: democracy, rule of law, the universality of human rights and fundamental freedoms, respect for human dignity (…) and respect for the principles of the UN Charter and international law.

According to the Article 42, para. 1,7 of the Treaty:

> (…) Common Security and Defense Policy is an integral part of the common foreign and security policy. It provides the operational capacity of the Union, relying on civilian and military resources. Those resources are used on missions outside the Union in order to maintain peace, prevention of conflicts and strengthening international security in accordance with the principles of UN Charter. Resources are provided by the Member States. (…) If a Member State is victim of an armed attack on its territory, the other Member States are obliged to provide its assistance and support with all resources at their disposal, in accordance with Article 51 of the UN Charter.

This clearly shows that there are not legal norms which would allow collective self-defense in the name of EU. It is clear that EU has no competence in the area of collective security and thus in the so-called doctrine of preemptive use of force in self-defense. I must criticize the position of the US, Israel, Australia, and other states that support the so-called doctrine of preemptive self-defense, listing the reason that it is illegal and contrary to Article 51 of the Charter. It is more a matter of policy of preemptive use of force rather than international legal norm. The right of individual and collective self-defense is activated after committed armed attack. The disagreement among scholars over the scope of self-defense often comes down to the interpretation of Article 51. Those who support a wider right of self-defense, which goes beyond the right to counteract armed attack on national territory, argue that Article 51 actually kept the former common law on self-defense, by pointing out the inherent right of self-defense. Thus, at the time when the Charter was adopted there was a broad right of self-defense which allowed protection of own citizens and preemptive self-defense.

I am supporting the position of the second group of scholars – the meaning of Article 51 is clear: the right of self-defense is activated only in case of occurred armed attack. This right is derogation from the general prohibition on the use of force in Article 2 (4) and therefore it must be interpreted in very narrow terms. By reading Article 51 it appears that several requirements must be cumulatively fulfilled in order the use of force in self-defense be legally permissible:

- Force may be used in self-defence only in relation to an ‘armed attack’ whether imminent or ongoing. The ‘armed attack’ may include not only an attack against a state’s territory, but also against emanations of the state such as embassies and armed forces. (Wilmshurst 2005, chap.1). It means that the force is permissible only if there is direct act of aggression against state that activates article 51 of the UN Charter;
- The performed act of aggression, or the armed attack, has to be serious. The Charter empowers the Security Council to decide whether it is a serious armed attack in question;
- The right of self-defense activates only in case of committed unlawful act. Member states are not allowed to invoke the right of self-defense in order to implement coercive measures

of the UN (for example: it is illegal using force in order to impose peace and security when previously has not been committed an armed attack);

- The exercise of the right of self-defense must comply with the criterion of 'proportionality' and 'necessity'. The force is used to shot back the attacker and it stops at the moment when the threat is removed due to the force has been primarily used;
- The force is legitimate only if there is actual attack or the attack has already been committed. The force is not allowed to be used in order to establish a certain type of justice, conquering territories and carrying out reprisals;
- At the moment when UN Security Council has taken appropriate action against the aggressor, the individual right of self-defense turns into collective right of self-defence.

Measures taken in the exercise of the right of self-defense must be reported immediately to the SC. The Council retains the right and responsibility to authorize collective military action to deal with actual or latent threats. Any military action must be in accordance with the rules of the international humanitarian law that is governing the conduct of hostilities.

The Nicaragua Case

Central role in the debate over the scope of collective self-defense played the judgment of the International Court of Justice (further in the text as: ICJ) in *Nicaragua* case, regarding the legality of the force used in Nicaragua by the USA. At his trial, the Court first examined what is an armed attack: sending armed bands rather than regular military forces may constitute an armed attack if the scale and effects of the operation could be related with an armed attack, rather than ordinary border incident[3]. Supplying the rebels with weapons, logistical, and other support could be equated with threat or use of force, but does not constitute an armed attack (Nicaragua case, para. 195). Secondly, it is clear that a state which is victim of an armed attack must declare that it was really attacked. There is no existence of a rule in the international law that allows another state to exercise the right of collective self-defense on the basis of its own evaluation of the situation. Thirdly, the Court considers that there is no a rule that allows exercise of collective self-defense in absence of request made by the state which considers itself as victim of an armed attack. Hence, according to Article 51 of the UN Charter, a state must submit request to the SC informing him that uses the right of individual or collective self-defense. The absence of a report of this kind may be the reason to doubt that the state really acts on behalf of self-defense (*Nicaragua* case, para. 200). In case as this, the state may be convicted and sentenced for illegal use of force. That was the main reason for the ICJ, in its legal reasoning, to found that the US illegally used force on the territory of Nicaragua.

Kosovo: the new role for NATO

The use of force by NATO in Kosovo in 1999 caused substantial disagreements about the legitimacy of the armed intervention in terms of Article 2 (4) and Chapter VII of the UN Charter. NATO launched an air campaign titled Operation *Allied Force*, in March 1999, to halt the humanitarian catastrophe that was unfolding in Kosovo in that period. The operation was launched as a response to the repression of ethnic Albanians, in the region of Kosovo, by the

[3]Regarding the central issue – what is an armed attack, ICJ was guided by the *Definition of aggression* (UN General Assembly Resolution 3314 (1974). According to Article 3, paragraph (g), "*the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State qualify as an act of aggression.*"

federal government of Yugoslavia under leadership of Slobodan Miloshevich. After the use of force in order the Albanians in Kosovo to be protect, there was some uncertainty in terms of the official statements by NATO, regarding the legal arguments for military actions against former Yugoslavia. The initial authorization of the North Atlantic Council about the airstrikes in January 1999 only referred to the fact that crisis in Kosovo is a threat to peace and security in the region. NATO's strategy was halting the violence and avoiding humanitarian disaster. So the justification for undertaking the Operation titled *Allied Force* was focused on moral and political explanations, rather than on legal arguments. Despite the different views on the justification for the armed intervention, I consider the concrete NATO action as an obvious violation of the UN Charter. My point of view is based on several arguments.

Firstly, unilateral use of force by NATO was violation of Article 2, para. 4, elaborated above in the paper. The use of force was also violation of Article 24 of the UN Charter which gives the SC, not the regional organizations like NATO, OSCE, etc., primary responsibility for the maintenance of international peace and security.

According to Chapter VII, the SC must give explicit authorization of use of force as a measure that shall be taken to maintain or restore international peace and security. In this case, not only the SC did not give mandate for intervention by NATO forces, but also two permanent members, Russia and China did not give approval for NATO operations. The USA. Congress also rejected the proposal made by USA. President Bill Clinton to attack targets in former Yugoslavia explaining that it will be an obvious act of rudeness and also illegal if the bombing continues.

Secondly, there was violation of Chapter VIII: Regional Arrangements. According to the Article 53, para. 1 it is clear that: "(…) the Security Council shall utilize regional arrangements or agencies like NATO, OSCE, etc. for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council". As I have stated above, there was not authorization of that kind. Thirdly and last, there was violation of Article 1 and Article 7 of the North Atlantic (Washington) Treaty: "the Parties undertake, as set forth in the Charter of the UN, to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations. (…) This Treaty does not affect the primary responsibility of the Security Council for the maintenance of international peace and security". It is noticeable that NATO Operation in Kosovo affected the primary responsibility of the SC because the force was used without his explicit authorization. As never before, the international reaction about the Operation *Allied Force* confirmed the absence of unequivocal norm that allows use of force, not only for prevention, but also in response to significant humanitarian suffering. In terms of future operations like this one, the international community should take in consideration: degree of human rights violation, efforts of exhaustion the peaceful means for resolving the crisis, the level of international support, and participation in the intervention.

CONCLUSION

The exclusive right of using force is situated only in the UN Security Council. Nothing impairs the inherent right of individual and collective self-defense in case of committed armed attack against any member state of the UN until the Security Council takes the necessary measures for restoring international peace and security. The use of force by regional organizations like NATO, OSCE, etc. must be mandated by the UN Security Council. If we agree that the NATO Treaty does have a hard legal core which evens the most dynamic and innovative (re-)interpretation cannot erode, it is NATO's subordination to the principles of the UN Charter.

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THE MEDIA POLICY IN MONTENEGRO: FROM 1993 TO 2013

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Abstract

This paper attempts to emphasize the process of building the media environment in Montenegro with regards to media policy, legislation and institutional framework that followed the media boom in the last two decades. There has been a trend towards establishing new media entities, often focused predominantly focused on the sphere of politics. The emergence of several media entities on the media scene is often conflicting political and programmatic positions. The turbulent political events, learning media professionalism and ethics have caused the need for a serious approach to media policy legislation.

Key words: Montenegro; media policy; media institutions; legislation.

THE HISTORICAL DEVELOPMENT OF MEDIA

Since the time of the monarchy, the courts began to create representative public and separate private and public spheres in a specific, modern sense. (Habermas 1969, 19). In that manner changes have been eventually enacted at the global level and gave rise to divide the sphere of public, private and civil public relations and public officials. (Nuhanovic 1998, 181). Since the times of the Kingdom of Montenegro, political views were expressed throughout the print media and current social issues were discussed. (Vuksan 1934, 63). There is no doubt that the publishing, publicist and journalistic activity played a great role in the shaping of public opinion and political life in Montenegro, even though they were mainly influenced by the government till the emergence of an independent press. January 23, 1871 is considered as a beginning of the journalism in Montenegro, when the first issue of the newspaper for literature and policy "Montenegrin" appeared. The release date of the first Montenegrin newspaper is extremely important for the public development in Montenegro and ever since we can talk about continuity of journalism and media in Montenegro. The journal "Montenegrin" is predominantly significant for the Montenegrin journalism. After the peddling ban on the neighboring territories of Austria and Turkey in 1893, it has been issued under the name "Voice of Montenegrin" since April of the same year. (Sredanovic 2007, 61). Later on, especially in the period between the world wars, Montenegro could boast a variety of media subjects, for example: "Free thought", "Zeta" etc. The underdevelopment of media space (only one daily newspaper and national television) characterized the post-war socialist society. The only newspaper that was published in Montenegro until the end of the 90s was "Pobjeda". For decades it represented an informative political magazine of the Socialist Alliance of the Working People of Montenegro. The first edition was issued in the liberated city of Niksic on October 24, 1944. Since June 1954 "Pobjeda" was released in Titograd, nowadays Podgorica. The average daily circulation of

"Pobjeda" in 1982 up to 22.000 copies, and at the end of that decade and the beginning of the last decade of the millennium, a period called AB or anti-bureaucratic revolution that took place on the eve of the dissolution of former Yugoslavia. "Pobjeda" in the Montenegrin situation achieved gold circulation - between 30 and 40 thousand copies a day, until the advent of the domicile of competition (primarily "Vijesti" and "Dan"), which has significantly reduced sales of copies . Radio Titograd became operational in 1949, the former Radio stemmed from the former Radio Cetinje. The oldest local radio in Montenegro is Radio Niksic, which began its work on 18 September 1973. (Sredanovic 2007, 103). The first private radio "Elmag" became operational in 1994. The beginning of the Montenegrin television practice binds to 1964, when the first TV report was made, while until then the common Yugoslav TV program was retransmitted, as well as the signal of the Italian RAI. At the beginning of the 90s, Montenegro introduced political pluralism in the era of the global increase in the importance of mass media. The media, especially television, have a "lasting" and general, rather than specific and formal role in forming attitudes and assumptions necessary for people's participation in social life and promoting political tolerance and different ways of thinking. Political tolerance would be the extent to which an individual is willing to let the erroneous opinions or ideas discussed, printed or propagated. (Heinemann 2004, 121). Since the introduction of the multiparty in the 90s to the present day, the Montenegrin media normative framework is marked by social and political context in which it was produced, and nothing less historical. Without the necessary level of culture there can be no medium of trust, or trust in the media, and thus neither solving of the problems that society faces. In the last two decades of continuous legal provisions and dialogue with the media community, Montenegro ranked itself in the circle of those companies which advanced European media solutions that are neither a mystery nor a taboo subject.

THE POLITICALLY TURBULENT PERIOD: FROM 1993 TO 1998

The regulatory framework of the early 90s as a reflection of archetypes and perceptions of legacy media policy is predominantly generated by state supervision. With the strong imprint of actuality of political issues of that time, the media quality is typical for post-socialist societies, with all the challenges and problems of democracy in maturing. Public dialogue forum of this period is marked by the discussions that have provoked questions of always conflict field state-media relations. At the same time, the other half of this period was marked by the polarity of the representatives of the journalistic profession. And the apparent tardiness in order to create sustainable media environment, codify standards and elements that need to be objectively and professionally guided. The dualism of the media normative solutions was manifested by conflict character of the state unions of the Federal Republic of Yugoslavia (FRY) and Serbia and Montenegro. Those have produced visible antagonisms of media praxis. The process of building substantial new public information system in Montenegro started with the adoption of the Law on Public Information in 1993. The law created the legal basis for the regulation of this area in accordance with the then achieved level of democratization and compatible European practices and experiences. For the first time, only this law clearly stipulates that any natural or legal person, regardless of the character of the property, may establish a public media service. In this way, three important ways in the direction of European standards were opened, those are: privatization of the media, the possibility of foreign investment and simplifying the procedure of establishing print media. The period up to 1998 is essentially designed on the basis of centralistic media system, with the dominant role of the state in the supervision and management of state-run

media. By the Public Information Act 1998, a significant portion of the shortcomings of regulatory decisions of the previous law is removed. In this regard, substantially new way of managing the corporate and public media is adopted, founded by the Republic or local governments. Governing board, supervisory board and director are given broad managerial rights in the business of these legal entities on a market basis, while the software aspect of the public media for the most part is linked to the program committee and the editor in chief, who freely and fully self-govern public media and freely select and appoint an editorial structure of the public media. The Public Information Law on February 16 1998 adopted by the Parliament of Montenegro shall be provided and guarantees freedom of public information. (Official Journal of the Republic of Montenegro 1998, 2).

REFORM OF THE PUBLIC INFORMATION – A PARADIGM OF CHANGE

One of the main directions of the reform of the media system of this period is a fundamental change of the position, operation and control of the state media, which are transformed into public services, respectively the media in the service of their listeners and viewers. In all this, the determination of citizens for the control over the media is the most important element for understanding their overall attitude towards the media. There was also the biggest inflow of foreign donations in the media sector in Montenegro. Just a willingness to enter into a comprehensive process of adapting the existing and construction of new legislation and the creation of a new institutional framework met with understanding in the international community. Within international cooperation and technical and professional assistance to the media and all other stakeholders in the media system to establish contacts, exchange experiences and analyze defects or untapped opportunities of existing system. Accepting the Charter on Freedom of the Media, adopted at the regional table of the Stability Pact for South Eastern Europe on 8 June 2000 in Thessaloniki, the state bodies of the Republic of Montenegro committed to undertake continuous normative, institutional and policy initiatives within which will be guaranteed and promoted media freedom, support the development of professional journalism and provide a comprehensive transformation of electronic media in the Republic in accordance with international standards. According to the status of the early users of the Stability Pact for South Eastern Europe, Montenegro is used to display the status and projects in the field of media. This is why the European Agency for Reconstruction and the Council of Europe, 14 August 2000 signed a Joint initiative on adapting the legal framework in the media field in Montenegro. The main objective of the initiative was complete and feasible reform of the media system in the direction of creating conditions for the formation of free airtime as the main mechanism for the intensification of democratic processes in Montenegro. Its result is a set of media laws that were adopted among which: Media Law, the Law on Broadcasting and Law on Public Broadcasting Services “Radio Montenegro” and “Television of Montenegro”. In the modern era, the clear principles and principles of the conditions for the existence of services are crystallized. (McQueen 2000, 268). In August 2003, a new Common initiative was signed between the Council of Europe and the European Agency for Reconstruction, which continues to operate effectively in the further improvement of legislation in the field of media in Montenegro and its application. Adoption of the mentioned law from the First initiative represents an important step towards the harmonization of the Montenegrin legislation Council of Europe standards, but as stated in the Action Plan adopted by the Secretariat for Information of the Government of the Republic of Montenegro in December 2002, “there are still a lot of open

questions". It is this plan that directed team of the Council of Europe and the European Agency for Reconstruction, which prepared program of activities of the two organizations, in the direction of improving the media system in Montenegro. Historical and civilization departure from monocentric media culture and state paternalism was marked by a media reform in 2002. The essence and depth of this reform procedure set in the heart of the problem, thereby solving the most important issues for the development and creation of an atmosphere of work of mass media. Roland Larimer (1998, 63) defines mass media as social institutions that operate within certain rules and media policy. From the historical angle, the year 2002 is an important date of discontinuity with the spirit of heritage legacy of socialist practice modeling media system, which despite occasional normative tweaks, essentially did not guarantee genuine ambience of advanced democratic societies. At the same time, this was a strong impetus for progress in the wider social sustainable public dialogue discourse, much needed for a broader historical and political context in which these years Montenegro found itself. However, the support of international experts and the partnership of governmental and non-government sector and the media community, resulted in the appropriate European solutions which were unanimously adopted by the Parliament in 2002. The presence of experts of the OSCE, Council of Europe, Article XIX and the similar, detergents democratic credibility and legitimacy of this process. In summary, significant capital elements that are rooted in its manifestation outgrew the formulation on the relationship of media, media policy and society, public and commercial media. On the influence of the media, public and commercial, John Street (2003, 82) is decisive, pointing out that the public service affects its audience as citizens who have different tastes and interests, informs, entertains, educates. While on the other hand, private, commercial media entertains its audience as an influence on its consumers. In order to guarantee the independent functioning of the media environment for amending the Criminal Code as a measure of the Action Plan for monitoring the implementation of recommendations from the European Commission - "Draft Law on Amendments to the Criminal Code - Decriminalization of defamation" of 22 June 2011.

THE INSTITUTIONS AND THE SELF - REGULATORY BODY

The implementation of the media law establishes a completely new, democratic mechanisms and institutions, complex, coordinated procedures and methods in order to harmonize the actions of a large number of subjects. The full guarantee of free public speech brought by the new media laws is a basic prerequisite for realizing the concept of open society, which implies the pursuit without no end, with the central idea of serving the needs and interests of the public, the citizens. This idea can be carried out from the perspective of public radio and television only through financing and conception of public broadcasting organizations. They should lastly serve the public interest - to work for the public and in its name. On the institutional foundations of the dual system of broadcasting commercial and public broadcasters state RTVCG is institutionally defined as a national public service broadcaster, with political, financial and institutional independence. Also according to the same model, the municipal radio and TV stations are institutionally transformed into local public service broadcasters, which is in its act of an advantage to the region of Southeast Europe. In the context of highlighting the importance of media and public relations, it is necessary to point out an observation of S. Back that distinction should be made between public relations as an integral part of the state administration and the modern concept of management as a discipline. It emphasizes that the

mass media were always primarily intended for those who did not govern directly governed society. (Black 1997, 200). In 2003, the Agency for Broadcasting was founded (since 2008 the Agency for Electronic Media) as the authority responsible for the regulation of broadcasting. The agency is legally separate and independent from state authorities and all legal and natural persons engaged to the production, transmission and broadcasting of radio and television programs. The Agency manages the Agency Council, and authorized nominators are: Montenegrin Pen Center, University of Montenegro, and Broadcasters' associations in Montenegro, thereby excluding associations of public broadcasting services, Non-governmental organizations dealing with the protection of human rights and freedoms, Non-governmental organizations in the field of media. A member of the Council Agency performs their duties independently, according to their own knowledge and conscience, in accordance with the law. In order to provide better regulation of the media, media ownership and freedom of media legislation, inspirational and theoretical assumptions from media sphere theorists such as A. Nuhanovic (2005, 153), J. Keane (2003), K. Jakubovic (1995), are used. The aging methods of work and organization of the state administration were performed by the Ministry of Culture - Media Sector. The previous period was institutionally defined as normative and played regulatory role of the Secretariat to inform the Government of Montenegro.

CONCLUSION

In the past twenty years, the issue of media freedom was the topic that caused the sharpest legislative and public debate that is often attended by totally opposing irreconcilable benchmarks. Historical-social cultural situation of the analyzed period significantly influenced and determined the character of the media writing in Montenegro. It remains a paradigm that without the necessary level of democratic-civil culture there can not media trust, nor trust in the media, and consequently solution of the problems society is facing. Media reform is indeed fight for a free public and citizens. The new institutional framework (the independent regulator, deregulated media system, support for self-regulation, the acceptance of the European Court of Human Rights etc., is identified in the final and positive reports of the European Commission, dedicated to fulfillment of obligations in the field of harmonization of the national legal system with the European legal framework. Since the media are an inseparable part of society, their development, problems, challenges and vision are ultimately more or less reflexes of general feature of the Montenegrin society - democratic, historical, political, civilizational, economic and social. The historical-political-social environment for the period 1993-2013 was full of the widest repercussions and public debates that accompanied Montenegro in its state-political evolution and period temptations of the break-through status of the republic in Yugoslavia and the state union of Serbia and Montenegro to restore independence in 2006. The period from the state independence until today, patiently and persistently, is by the state and in order to join European media values used for the implementation of experiences and solutions appropriate to the civil character of the state. One of the main directions of the reform of the media system, in line with European standards, whose normative redesign began in 2002, is a fundamental change in the position, performance and control of state electronic media transformed into public service broadcasters, as well as the deregulation of media policy on the basis of the institutional position independent regulator for the electronic media and the principle of self-regulation, as well as purposeful substitute of measures of state regulation of the media.

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DEVELOPMENT OF PRINCIPLES FOR PROSECUTION OF CRIMES IN THE INTERNATIONAL TRIBUNALS: THE CASE OF REPUBLIC OF MACEDONIA

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Abstract

This paper is about development of investigative activity procedures and prosecutions in the international tribunals since the Nuremberg Charter, with special reference to the International Criminal Tribunal for the former Yugoslavia and cases involving the Republic of Macedonia. According to that, the paper firstly indicates the International Court of Justice and Statute of ICTY where the tribunal has jurisdiction over four crimes: grave breaches of the Geneva Conventions, violations of laws or customs of war, crimes against humanity and genocide committed on the territory of the former Yugoslavia from the start of the war in 1991 until to a date to be determined by the Security Council upon the restoration of peace.

Key words: prosecution; criminal investigation; trial; ICTY; appeal.

INTRODUCTION

This paper explains the Geneva Convention, because of the relation to the grave breaches and the UN Charter and its power from Chapter VII for establishment of the International Criminal Tribunal Yugoslavia (ICTY). In detail, the paper elaborates the way of making indictments, procedures of investigative activities, the admission of evidence, the protection of victims and witnesses and the trials where it leads to reaching a verdict. The aim of this research is to have an in-depth look into the investigative activity, procedures and prosecution of the International Criminal Tribunal for the former Yugoslavia, to see what exactly they are, to see the purpose of its establishment, powers and responsibilities and rules of investigation and procedures and how the work is being carried over by the Residual Mechanism. The research will identify how the rules of procedure came to be adopted by previous international tribunals. This thesis is of paramount importance since it explains the actions and procedures of prosecution and thus one can get a clearer image of the International Court of Justice and and the tribunal for former Yugoslavia in particular. The function and responsibility of this body is of great importance for the peace and stability in the region and the Balkans. The manner of its functioning and powers of abstraction, the framework in which authority derives its roots from the Charter of the United Nations proves its legitimacy and properl international functioning. On 27 May 1999 the ICTY became the first international court to indict a sitting head of state for war crimes and crimes against humanity. Slobodan Milosevic was indicted by the tribunal at the height of the war in Kosovo for the deportation and murder of Kosovo Albanians.

These charges were subsequently extended to include genocide, crimes against humanity, and grave breaches of the Geneva conventions and violations of the laws or customs of war in Bosnia and Croatia as well as Kosovo. The second example is from Macedonia - Ljube Boskovski - Macedonian Minister of Interior Affairs.

The International Court of Justice

Like every organ of the United Nations, the International Court of Justice was established by the Charter of the United Nations in June and began its work in April 1946. This is the principal judicial organ and the seat is at the Peace Palace in The Hague (Netherlands). The General Assembly and the Security Council elect the 15 judges for a mandate of nine years. The administrative organ that assists the judges is the Registry. The official working languages are English and French. The conception of the court arises from the need for making settlement of international disputes. (United Nations Charter Art. 33).

The origins

John Jay's Treaty (1794) between United States of America and Great Britain is the so called Treaty of Amity, Commerce and Navigation, and it represents the beginning of the international arbitration and its task was to settle the questions between the countries which cannot be resolved by negotiation and are extended to a tribunal. Second phase started in 1872 between these two countries. Third phase was initiated by the Russian Czar Nicholas II at the Hague Peace Conference of 1899. At this conference, the participant discussed for peace and disarmament. And finally, they adopted the Convention on the Pacific Settlement of International Disputes (1907) whose main task was arbitration and other good offices and mediation. The Permanent Court of Arbitration has jurists elected from each country and Bureau that has the same responsibility like the Court registry or Secretariat and makes set of rules to govern the conduct of arbitration.

The Second Hague Peace Conference held in 1907 developed the rules governing the arbitral proceedings. Some fundamental ideas from this court were a source of inspiration for drafting the Statute of the Permanent Court of International Justice some years later. All of the ideas that were inspired by the two Hague Peace Conferences were good not only for the Central the Central American Court of Justice which operated from 1908-1918 but for the Permanent Court of International Justice and its framework that was set up after the end of First World War as well. The Council of the League established this Permanent Court of International Justice under Article 14 of the Covenant of the League. The main responsibility was to hear and determine any dispute of international character and to give an advisory opinion. The statistics tell that PCIJ dealt with 29 cases between states and have 27 advisory opinions between 1922 and 1940.

The ICTY Structure

Three main pillars or components compose the structure of the International Criminal Tribunal for the former Yugoslavia (ICTY). These are the Chambers, the Office of the Prosecutor and the Registry. The president of the Tribunal is elected with a majority of votes from the permanent judges. The president performs two year term and may once be re-elected. Theodor Meron is the current president who runs his second mandate. Vice-president is also

elected by the same procedures. There are three trial chambers and an appeal chamber. Every trial chamber is composed of three permanent judges. The number with *ad litem* judges may increase to 6. Mainly, trial chambers task is to hear the case and provide fair trial procedures. Trial chambers also impose the decisions for the individual cases. The appeals chamber has 5 permanent members of the ICTY. Appeal chamber listens and decides on appeals by the sentenced individuals. The task of the Office of the Prosecutor is to investigate, explore, observe and prosecute individuals that performed crimes. The Office is led by a Prosecutor. He also presents crime cases in front of the trial chambers or the appeal chamber. The Prosecutor service lasts four years and his/her mandate may be renewed. He is appointed by the UN Security Council. The most important principle is the independence of the Prosecutor in order to provide righteous investigation. The Prosecutor must not be determined by the opinions and suggestions from governmental institutions and the other two organs of the ICTY. The Office is divided in three branches: Prosecutor Division, The Immediate Office and the Appeals Division. The Registry also includes three sectors, i.e. the Judicial Support Division, the Immediate Office and the Administration Division. Basically, it is an UN administrative organ. Its functions are wide-ranged, diverse and complex. Its duties may be compared to those of the ministers in domestic systems. The Registry is obliged to find witnesses and provide them necessary protection. Sometimes the Registry performs diplomatic function, communicates and coordinates with various bodies in the international community. The UN Secretary-General appoints Registrar who heads the Registry. The goal of the Tribunal was to finish all of the trials until 2012 and all of the appeals until 2015, but the Karadzic, Mladic and Hadzic cases may postpone that scenario. From 1 July 2013 the jurisdiction of ICTY in terms of supervision of sentenced cases was passed on the United Nations Mechanism for International Criminal Tribunals.

The ICTY Cases

According to the official information, up to 12 February 2014, 161 people were indicted by the ITCY. There are ongoing procedures for 20 accused individuals. Sixteen of them are in front of the Appeals Chambers and four of them and probably the most important ones are currently on trial. The cases that provoked so much attention and controversies were the cases of Karadzic, Mladic, Hadzic and Seselj. The processes for the rest 141 people are finished (according to the official website report of the ITCY). Many of them have been convicted and already served their penalties. Among the indicted ones we can find Presidents, Prime Ministers, Ministers, Generals and many other government officials. More than half of the indicted individuals are ethnic Serbs from Serbia and Republika Srpska. The percent of convicted individuals with Serbian nationality is very high. Among the others indicted are Croats, Muslims, Albanians, Montenegrins and Macedonians. Two Macedonians were accused, arrested and preceded to Hague. One of them is Ljube Boskovski, the former Macedonian minister of Internal Affairs who was declared innocent, but Johan Tarculovski, Macedonian army general, was found guilty and recently finished serving his sentence. In general, the Hague Tribunal deals with war and crimes committed among Croats, Serbs and Muslims in Bosnia, it deals with Croats and Serbs in parts of Croatia, but also with Serbs and Albanians from Kosovo in Kosovo and Macedonian and Albanians in Macedonia. Srebrenica massacre is one of the most brutal massacres in recent history, so it is obvious why the biggest list of convicted individuals is that one connected with people who performed actions in Srebrenica. Many of those individuals were sentenced to 20 years while several people were punished to life imprisonment. Bearing in mind that the memories of wars treated by the Hague Tribunal are still fresh, it is clear why almost

every decision caused so many controversies. Although one of the aims of the ITCY is to help the reconciliation with fair and righteous decisions, unfortunately, in some cases it provoked opposite effects.

The case of Macedonia

Macedonia declared its independence on 25 September 1991 by a referendum where 95,26% of the people voted for independence. The population mainly consists of ethnic Macedonian majority and large Albanian minority. The ethnic tensions in 2001 started in January when the Albanian National Liberation Army fought for equal rights and later gained autonomy or independence in the Albanian populated areas. In May 1991, a national Government was formed; with all Macedonian parties, governed by Ljupco Georgievski. All acts of violence, armed protests and ethnic desolation were settled down with the Ohrid framework agreement in August when the peace agreement was signed and greater right in handing over the arms to NATO peace forces was recognized. Afterwards, the Operation Harvest was NATO's main operation in order to collect 3,300 pieces of weapons, thereby granting amnesty to the former members of the Albanian National Liberation Army. In November, the Government voted for additional constitutional rights in all areas that have 20% Albanian minority. That would concern the official language, the number of Albanians working in the state and the public institutions including the police as Macedonians too. Regarding the ICTY and the Macedonian cases, there are two cases: Ljube Boskovski and Johan Tarculovski. In addition, this paper elaborates the case of Ljube Boskovski and one of the main cases regarding Yugoslavia – the case of Slobodan Milosevich. Ljube Boskovski was charged on the basis of superior criminal responsibility ("the fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof." Article 7 (3), Statue of the ICTY) with:

- Murder, wanton destruction of cities, towns or villages and cruel treatment (violation of laws or customs of war, Article 3).

Tarculovski was charged on the basis of individual criminal responsibility ("a person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime." Article 7(1), Statute of the ICTY) with:

- Murder, wanton destruction of cities, towns or villages and cruel treatment (violations of laws or customs of war, Article 3)

The case of Ljube Boskovski

Following the parliamentary elections in 1998 and the victory of VMRO-DPMNE, he was appointed Deputy Director of the Directorate of Intelligence (DDI) in the Ministry of Interior of the Republic of Macedonia. On 31 January 2001, he was appointed State Secretary in the Ministry of Interior. On 15 May 2001, the ruling Government appointed him a Minister of Internal Affairs of the Republic of Macedonia. After the parliamentary elections on 15th of

September 2002, he was dismissed from the post of minister and became a deputy in the Parliament. In April 2004, Boskoski collected 10,000 signatures and submitted a candidature for the presidential elections, but, his candidacy was rejected by the State Election Commission because he did not meet the requirement of 15 years of continuous residence in the country. In 2008, i.e. after the return of Boskovski from Scheveningen, he founded the party United for Macedonia and became its president. At the parliamentary elections in 2011, Boskovski and his party won 1,52% votes. After the elections, on 6 June 2011, Boskovski was arrested by members of the mobile police unit "Alfa", on suspicion of illegal campaign financing.

Charges

In terms of charges, Boskovski's defense supported the view that Boskovski was neither de facto nor de jure in charge of the police units that entered in the village Ljuboten and the units that were at the checkpoints as well as backup. However, prosecutors found that Ljube Boskovski, as Minister of Internal Affairs of the Republic of Macedonia, has the power to direct and control the police and every other task force. OJ applies in sectors in the Ministry of Interior and is responsible for internal investigation and aiding and assisting all the processes undertaken by the public prosecutor. This refers to the power and authority over Tarculovski who at the time was employed in the Ministry of Interior. Prosecutors found that Boskovski was not in Ljuboten on August 12, and later on, an expanded operation under the orders of the President of the Republic of Macedonia he went to Ljuboten. At that time the operation was near a completion, so, during his visit he could not know that the operation included cruel treatments, killings and destruction of villages and places. Two days after the police received reports on hearsay and non-governmental organizations and diplomatic channels, Boskovski learned about serious police violations in Ljuboten and events that happened 12 days after. In addition, Boskovski ordered an investigation to punish the people who were responsible for these events according to the jurisdiction of the Republic of Macedonia. This investigation will beat according to Article 7 (3) of the Statute if the criminal investigation is appropriate under criminal authorities. Actually two statements were made, one by the Ministry of Interior and the other by the public prosecutor. These reports of his officers were not accurate and did not accurately describe the criminal conduct. In fact, according to the existing laws, a formal investigation should take that the prosecutor and an investigative judge must consider the death of the victims and misconduct off the shelf, including the destruction of villages and cruel treatment. Actually, there was not investigation by authorities in Macedonia against the police. Boskovski has no authority over judicial authorities to launch an investigation and about the failure of the police to carry out its mandate. So, the failure of the police operation and the responsibility of the Macedonian authorities proved that Boskovski was not responsible and that under Article 7 (3) he should take the necessary measures to punish the police.

The Statute of the International Residual Mechanism for Criminal Tribunals

Regarding the *Statute of the International Residual Mechanism for Criminal Tribunals,* it is established on 22 December 2010, SC/10141, and it is composed of two annex resolutions. The first one is the Statute of the International Residual Mechanism for Criminal Tribunals and it has 32 Articles and the Resolution Annex 2 concernes Transitional Arrangements and has 7

Articles. In the Preamble, the UN Security Council is acting under Chapter VII of the UN Charter:

> Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations to carry out residual functions of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter: ICTY) and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994 (hereinafter: ICTR), the International Residual Mechanism for Criminal Tribunals (hereinafter: the Mechanism) shall function in accordance with the provisions of the present Statute (…)

According to Article 1 to 8 of the ICTY Statute and Article 1 to 7 of ICTR Statute concerning the competence to the Mechanism, the jurisdiction of the ICTY and ICTR will continue (See: Articles 1 to 8 ICTY Statute (S/RES/827 (1993); Annex to S/25704 and Add.1 (1993); Articles 1 to 7 ICTR Statute, Annex to S/RES/955 (1994)). In Article 3, in the Statute it is underlined that this Mechanism has two branches, one for ICTY and one for ICTR. Article 4 is for Organization of the Mechanism, where it is stated:

> The Mechanism shall consist of the following organs:
> (a) The Chambers, comprising a Trial Chamber for each branch of the Mechanism and an Appeals Chamber common to both branches of the Mechanism;
> (b) The Prosecutor common to both branches of the Mechanism;
> (c) The Registry, common to both branches of the Mechanism, to provide administrative services for the Mechanism, including the Chambers and the Prosecutor.

From 8 to 12, the roster and qualification of the judges is explained. Article 13 concerns the Rules of Procedures and Evidence. There it is set that the judges must adopt the Rules of Procedures and Evidence for the conduct of all three phases: pre-trial, trial and appeals. These Amendments may be decided by the judges of the Mechanism in written procedures. Also all of the amendments must be consistent with the Statute. All the proceedings from the indictment of the Prosecutor to the trial, Rights of the Accused, Protection of Victims and Witnesses, Judgments, Penalties, Appellate Proceedings, Enforcement of Sentences to Pardon or Commutation of Sentences are explained till Article 26. The second annex refers to Trial Appeals and Review proceedings. The ICTY and ICTR shall have competence to complete all trial or referral proceedings which are pending with them as of the commencement date of the respective branch of the Mechanism. (Resolution 1966 (2010), Article 1 Annex 2). The ICTY and ICTR shall have competence to conduct and complete all appellate proceedings for which the notice of appeal against the judgment or sentence is filed prior to the commencement date of the respective branch of the Mechanism. (Resolution 1966 (2010), Article 1 Annex 2). The ICTY and ICTR shall have competence to conduct and complete all reviewed proceedings for which the application for review of the judgment is filed prior to the commencement date of the respective branch of the Mechanism. This Annex has 7 Article and other are for Contempt of Court and False Testimony, Protection of Victims and Witnesses,

Coordinated Transition of other Functions, Transitional Arrangements for the President, Judges, Prosecutor, Registrar and Staff.

CONCLUSION

The ICTY is a legitimate international body created by the United Nations concerning the states of the former Yugoslavia. With the dissolution of Yugoslavia and the wars in Croatia, Bosnia and Kosovo, heads of state, ministers and others undertaking vital functions have been charged and taken to The Hague to be tried for acts against humanity, genocide etc. In this paper the parts regarding charges that are related to the investigation and prosecution procedures are developed. The prosecutor's office and investigations which require hard work, collection and consideration of documents, identification of witnesses, gathering statements exhumation of mass graves and collecting other physical evidence are crucial elements in this master thesis. These are crucial elements in the process and it depends on them, whether charges will be brought successfully in this Tribunal. All of these actions are legal under the Statute of the Tribunal and the resulting cooperation of the states with the tribunal. The importance of this thesis is of paramount importance, because it explains the actions and procedures of prosecution and thus one can get a clearer image of the International Court of Justice and the tribunal for former Yugoslavia in particular. Here are emerging powers of tribunals which are different from courts in sovereign countries where the tribunal may only require states to cooperate voluntarily and in good faith, and that means cooperation often depends on the political criteria and especially the political interests of those who manage these countries. Furthermore, there are indictments against Slobodan Milosevic and Ljube Boskovski, the former Minister of Interior of the Republic of Macedonia, charged in the case “Rashtanski Lozja”. Ljube Boskoski was the highest authority in the Ministry of Interior and thus had overall authority and responsibility for the functioning of the police forces within Macedonia, both regular and reserve. The function of the *Residual Mechanism* is of crucial importance and this is temporary and functional body that keeps the rights and obligations of the tribunals until their final and complete termination of their functions by maintaining the legacy of both institutions. Mechanism for ICTR functions from 1 July 2012 and for ICTY from 1 July 2013.

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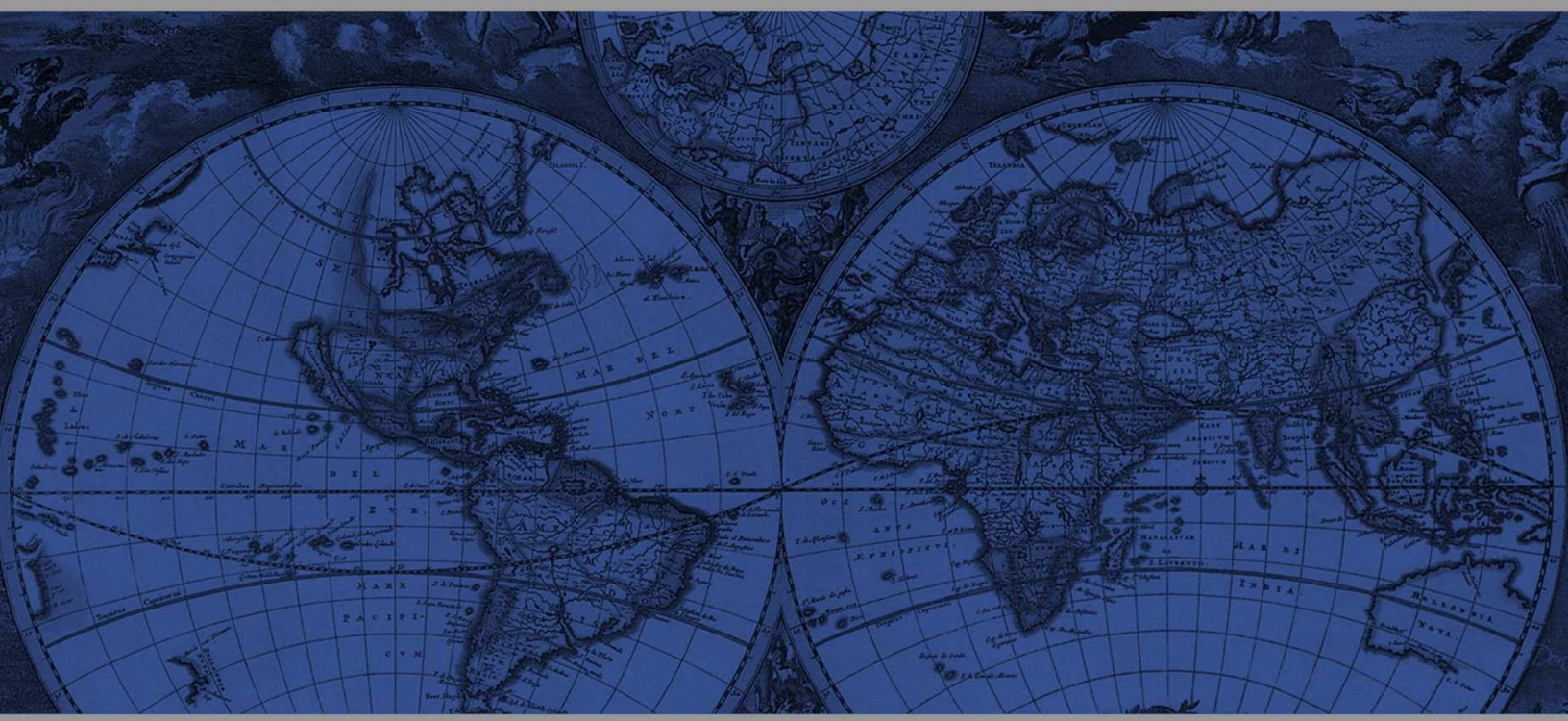

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